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—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

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The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MAY 6, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

PROPOSED AMENDMENT OF THE COUNTY COURTS ACT.

WE adverted some time since* to the fact, that persons committed to prison under the County Courts' Act were subjected to the same regimen and prison discipline as felons, and took occasion at the same time to express our sense of the unexampled harshness and injustice of such a course of proceeding. The legislative enactment which was supposed to warrant this severe exercise of authority, as we then intimated, was taken from the 7 & 8 Vict. c. 96, (subsequently) introduced into the Act “for better securing the payment of Small Debts,” (8 & 9 Vict. c. 127, s. 1,) and was thence imported into the County Courts Act. The Small Debts Act obtained the Royal Assent, and came into operation on the 9th August, 1845. How many poor debtors have since endured—perhaps sunk under—the cruel and degrading treatment to which they have been subjected under this provision, we have no means of ascertaining. It has happened, however, that a Mr. Pollett, who had been clerk in a railway office, was committed to the Clerkenwell House of Correction for five days, under an order from the Whitechapel County Court, for a debt of 2*l.* Mr. Pollett, like other prisoners of his class, had his hair and whiskers cropped, was fed on water-gruel, and set to picking oakum. It happened, however, fortunately perhaps for the interests of humanity, that Mr. Pollett

had influence enough, somehow or another, to get the particulars of his case, and the treatment to which he was forced to submit during his five days' residence in the house of correction, published in one of the daily journals. The statement not only excited the surprise and roused the indignation of the public, but it also happily attracted the attention of some members of the legislature, and was made the subject of inquiry in parliament. The result is, that a bill was prepared and brought into the House of Commons, by Mr. Cochrane, “to amend the Laws relating to the Recovery of Small Debts in England,” which was rejected, upon the statement of the Attorney-General, that if the power of the County Courts were restricted in the manner proposed, the credit of the country could not be supported.

Assuming the power of committal, as heretofore exercised by the judges of the County Courts, and the treatment to which prisoners so committed have been subjected, to be warranted by the letter of the law administered by the County Courts, it is manifest that the two matters have no necessary connection. The power to imprison for small debts may be salutary and expedient, whilst the infliction of a felon's punishment on a man who has incurred a debt of 2*l.*, which he is unable to pay, may be at once mischievous and monstrous. Or, it may turn out, upon a consideration of its practical operation, that the authority to imprison in cases of debt under 20*l.* was unadvisedly conferred on the County Court judges, and ought to be revoked, or, at all events, that it ought to be modified

* See Leg. Obs. vol. 35, p. 137.

and restrained. Mr. Cochrane, and those who assisted him^b in framing the bill rejected by parliament, would seem to have thought that all objections would be obviated, if persons hereafter committed under the County Courts Act were treated as debtors, not as felons, and the power of imprisonment slightly restricted. Before stating the grounds on which we venture to question the accuracy of that conclusion, it may be convenient that our readers should be in possession of the proposed amendments, which were contained in two short sections.

After reciting

"That the judge of any court to be holden under the authority of the act (9 & 10 Vict. c. 95.) is empowered in certain cases to order that a party summoned as therein expressed may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the court, for any period not exceeding forty days, and the judge of any such court is also by the said act, in certain cases of contempt of court therein specified, empowered to impose upon any such offender, as in the said act is expressed, a fine not exceeding 5*l.* for every such offence therein specified."

The 1st section proposed to enact as follows:—

"And whereas it is desirable to amend the said act, and to make other provision in the premises; be it therefore enacted, that from and after the passing of this act, it shall not be lawful for any judge of any such court as aforesaid, to order that any such party so summoned, as in the said act is expressed, may be committed to any common gaol, house of correction, or prison, not having a debtors' side or place for the exclusive reception of debtors, nor to any other part of such common gaol, house of correction, or prison, save only such debtors' side or place, nor for any period exceeding three days."

The 2nd section further provided that

"From and after the passing of this act, it shall not be lawful for any judge of any such court as aforesaid, in case of any contempt of the said court, to impose upon any offender wilfully insulting, interrupting, or misbehaving, as in the said recited act is expressed, any fine or fines exceeding the sum of *two pounds* for every such offence."

It appears, therefore, that the alterations proposed to be effected by Mr. Cochrane's bill were threefold:—1st, That persons committed under the County Courts Act should

not be confined in a prison intended exclusively for criminals; 2ndly, That such persons should not be committed for a period exceeding three days; and lastly, That the fine imposed upon any person behaving indecorously in Court should not exceed 40*s.* It may be conceded that all these alterations would have been improvements upon the existing law, and rendered it more tolerable and less objectionable. But why, we would ask, should the power of commitment be given in cases falling within the jurisdiction of the County Courts, when no such power is given to the judges of the Superior Courts, whose jurisdiction in actions commenced in those courts is wholly unlimited as regards the amount sought to be recovered? Why is a judge of the County Court at liberty to commit a debtor to the extent of 40*s.* to prison for even three days or three hours, when no such power is given for the committal of a debtor who owes 40*l.*, or 400*l.*, or 4,000*l.*? A man who is unable to liquidate a claim not exceeding 20*l.* may generally be pronounced poor, whilst a man may have the means of procuring all the necessaries and many of the comforts of life, who is not ready to pay a debt of 4,000*l.*, or even 400*l.* Why imprison the poor man then, whilst you leave him, who is comparatively affluent, at liberty? We shall be told, in the first place, that the distinction is rendered necessary by the provision which abolished arrest on final process in actions for debts not exceeding 20*l.*, and shall be reminded, that the power of imprisonment given to the judges of the County Courts under the 9 & 10 Vict., is meant as a humane substitute for the power which every judgment creditor has of charging his debtor in execution when the amount exceeds 20*l.* Let us examine these suggestions separately. The enactment abolishing arrest in actions for debt not exceeding 20*l.*, it must be owned, gave perfect impunity to those who were unable or unwilling to pay debts within that amount. It brought ruin on thousands of small traders. But why endeavour to prop it up by another enactment equally unjust and objectionable? A law passed in the year 1844, and which caused such a universal outcry as to force upon the government the necessity of a modification in the following year, cannot yet be said to have taken any deep root in our legal system, or to exercise a very material influence upon the transactions of trade. Why then not repeal the enactment so universally condemned, rather

^b The printed bill states it to have been prepared and brought in by Mr. Cochrane, the Marquis of Granby, and Mr. Bankes.

than substitute for it another nearly as objectionable, pressing with as much injustice and severity on the debtor as that to which we have alluded did on the creditor? We do not forget that a judgment creditor for any sum exceeding 20*l.* is still at liberty to take the person of his debtor in execution, and when this has been done, that the imprisoned debtor who is unable to satisfy his creditor cannot look for his liberty at the end of even forty days, but must remain in prison until discharged by the operation of the Bankrupt or Insolvent Laws. Practically, however, it happens that a person in insolvent circumstances can generally anticipate and prevent arrest by suing out a fiat in bankruptcy, or obtain protection under the recent Insolvent Acts; and in the great majority of cases persons who take this precaution never are subjected to the punishment of imprisonment. The poor man, therefore, who is himself committed, or sees a person in his own condition of life committed to prison, under the order of a judge of the County Court, whilst a man who owes thousands of pounds escapes imprisonment, not unnaturally concludes that the law is unequal and unjust, and that it presses with peculiar severity on those who most need its protection. We do not insinuate that such a conclusion is well founded. We are well aware that the power of commitment given by the statute was intended to be exercised in particular cases of fraud therein pointed out—in cases where the debtor has neglected to do what he is legally, as well as morally, bound to do—namely, to pay a debt which he is able to pay. We know it has been said that the commitment is “by way of punishment and coercion, and ancillary to the payment of the debt.” Still the punishment frequently presses with great severity. It is expressly provided that the imprisonment shall in no case operate in satisfaction of the debt,^d and this provision of itself constitutes an invidious distinction between a commitment under this act and the imprisonment to which debtors of a different class are subjected when taken in execution. Surely the same principles should govern the Law of Debtor and Creditor, without reference to the amount of the debt. In this, as in many other respects, however, the County Courts Act is framed upon the assumption that a different law is applicable

to the rich and poor, and in this respect we have always deemed it to be essentially defective and objectionable. Mr. Cochrane’s bill professed to afford no remedy for this evil, and we cannot regret that it has been lost.

TAXES ON THE ADMINISTRATION OF JUSTICE.

ALTHOUGH we have for many years addressed our readers on the great grievance—both to suitor and solicitor—of the unjustifiable and enormous taxes levied for the expense of administering justice, we must again take up the theme; and we do it the more readily because at last there is good hope of a large share of success. It is very gratifying to find (though we may claim but little merit in the matter) that the leading men on the Bench and at the Bar are now heartily engaged in this the most just and important of all amendments in the law.

We have now the Solicitor-General, the son of the great Samuel Romilly, at the head of a committee of the House of Commons, composed of lawyers and statesmen of all grades of politics, inquiring into the gross abuse of the system. And ample evidence is adduced before the committee by all the persons most competent to afford information on the grievances complained of, and to suggest the best means of redress.

Referring to our former articles,^e we shall now resume our review of the evidence with the testimony given by the *Master of the Rolls*. This appears to us to be the most important part of the evidence yet adduced. Lord Langdale has evidently given all parts of the subject much consideration, and his valuable judgment, with the cogent reasons in support of it, must have great effect when the case is fairly brought before parliament.

We shall for the present extract the principal parts of his lordship’s statement and opinions on the injustice of taxing the suitor to pay the judicial and official establishment of the courts.

The first questions were,—whether the country ought to pay for the maintenance of the officers appointed for the administration of justice; and,—if that could not be obtained, whether the fees should be carried to a general fund, and applied in the most useful manner to the administration of justice;—and whether all the officers of

^d 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.

^e *In re Kinning*, 34 Leg. Obs. 255.

9 & 10 Vict. c. 95, s. 103.

^f See 35 L. O., pp. 133, 489.

the Court should be paid by salary rather than by fees?

To these his lordship said

“I have long been of opinion that the courts and officers of law, so far as they depend on the organization, establishment, and management of officers, ought to be treated like every other important department of government, and be paid by and kept under the superintendence and control of government; and that there is no more reason for charging the particular expenses of judicial and legal services upon suitors than there is for charging the expenses of any public services upon the particular persons who have occasion to apply to the government for such services. The legal department is amongst the most important branches of government. The establishment is maintained for the benefit not only of the particular persons who require remedies for the wrongs they have endured, but also for the common benefit and security of all who live under the protection of the law. It does not seem to me to be expedient or even just to charge the particular individuals who already are in distress by reason of the insufficiency or inefficiency of the law and the conduct of wrongdoers, with the further expense of maintaining the establishment by which the law is to be declared and the wrongdoers are to be prevented from pursuing their course of injury. I think, therefore, that it is the proper duty of the government to pay those expenses. It seems to me quite wrong to make any addition which can be avoided to the suffering already occasioned by the inadequacy of the laws.”

And, further, his lordship said,

“All judges, officers, and ministers should be paid by the public, and I think by salaries. What reason can be given why the suitors of the Court of Chancery should be charged with the salary of the Lord Chancellor, with the salaries of two Vice-Chancellors, with the salaries of the Masters, and of various other officers? I conceive that all these are officers and ministers which the government is bound to provide; they are employed in the most important public services, and I know no reason why the expense of them should be exclusively charged upon the suitors. All the salaries are not so charged. The salary of the Vice-Chancellor of England is paid out of the Consolidated Fund, so is that of the Master of the Rolls. When the Rolls estate was vested in the Crown, the government consented to the arrangement by which the Master of the Rolls ceased to have even a nominal interest in fees. I think that all salaries ought to be in like manner paid by the public; and further, that compensations paid to persons for loss occasioned by reforms or improvements ought also to be paid by the public, for whose benefit the reforms are made. It frequently happens that for the purpose of correcting abuses and putting an end to unnecessary expenses, it is necessary to make changes by which individuals, without having committed any fault, or any fault of which they could be

aware, may be subjected to great losses, and perhaps be deprived of the only employment to which they have been accustomed from early life. They have passed their lives within the view of those who seem at least to have sanctioned the practice which grew up; and when a reform is required and contemplated, and the known effect of it will be to deprive such persons as I have adverted to of their means of subsistence, I suppose that considerations of justice and mercy, and the interests of reform itself, will induce most men to conclude that a fair compensation ought to be allowed; and if it be so concluded, should not the compensation be considered as the price paid for a public benefit—the benefit of that reform, which your own sense of justice would not permit you to effect without paying the price? and should not the government, which is the purchaser for the benefit of the public, discharge the purchase money? It is not thus, however, that compensations for losses occasioned by reforms in the Court of Chancery have been provided for. If grievances have had to be there remedied by reforms causing losses and requiring compensations, it has been necessary to prolong at least the pecuniary part of the grievance, in order to work out the compensations. I beg leave to mention the example of the late Six Clerks' Office. The constitution of that office was an undoubted grievance, not only a grievance in itself, but it stood as an effectual obstacle against any effectual reform in some of the other offices. It was most important to get rid of it; and, as I think, absolutely necessary to provide compensations for those whose emoluments, long sanctioned by acquiescent authority, were about to be taken away. The government, however, would pay nothing and would guarantee nothing, and therefore it became necessary to consider whether, for want of compensation, the intended reform should be abandoned and the grievance left as it stood, or whether the compensation should be provided by a temporary pecuniary burden on the suitors, so that the suitors might have the immediate benefit of so much of the reform as did not consist of mere pecuniary relief, and might after an interval, and by slow degrees and successive steps, obtain that full measure of relief which might have been obtained at once if this burden had not been imposed. Having been required to advise on that subject, I was then, as I am now, of opinion that it would be much wiser to continue for a time the expense (which I considered to be a grievance,) and let the burden gradually wear away as the compensations fell in, than to abandon an important reform, and permit the grievance to remain indefinitely without effectual remedy. A great outcry was naturally enough made by those who did not thoroughly understand the subject; but there is reason to be well satisfied by the result. The business is transacted in the reformed offices with incomparably greater efficiency and satisfaction; the way to many other reforms is facilitated; the fees which are taken from the suitors in the reformed offices

are already less by 11,000*l.* a year than the amount of the fees levied in the unreformed office; and the amount of the salaries paid to the new officers, of the large compensations paid to the old officers, and of other expenses, is already less by about 5,000*l.* a year than the amount of the fees which were received by the old officers before the reform. Without affirming that the act of parliament provided the best mode of settling the compensations, and disapproving, as I do, of the compensations being charged on the suitors, I can have no doubt that the reform has resulted in great benefit to the suitors. If the compensations had been paid by the government, that benefit would, of course, have been much greater."

Again, the Master of the Rolls says,

"If I might express a wish, it should be, not only that no officers should be interested in any fee, but that no fee at all should be received. Fees are in the nature of taxes. They are, I believe, called taxes in the order appointing this committee. I do not know whether fees in courts of justice have ever been so distinctly, and as I think so justly, designated on any former occasion of the kind."

* * * * *

"Before the year 1824, the Stamp Acts made a direct tax on justice in this country; and Lord Lyndhurst, when Attorney-General, conferred great benefit upon the country when he supported the bill by which those taxes were repealed. But I have a greater objection to fees than I have to less disguised taxes, and more especially to fees in which the officers have an interest. I am fully persuaded that you cannot establish any system of fees in which the officers have any interest without leading to great abuses: there is no power by which you can prevent extortion in some shape or other, if you once allow officers to demand or to accept money for their own use; even good men have their weak moments, and under some specious pretext will be tempted to take something different or something more than they ought to take; there will be something in the way of gratuity or civility money, at first given as a token of gratitude, and accepted under a consciousness of desert, but, in time, advances are made from hints to demands, till at length those who want a prompt service hardly venture to abstain from offers which ought never to have been made or accepted. I believe there is no way of avoiding abuses which grow up in this way, except by putting an end to the reception of fees, at least fees in which officers are interested, altogether. The great excuse made for paying officers by fees is, that you have no other way of stimulating the officers to diligent exertion; and it must be admitted that a man's pecuniary interest presses upon him so constantly and steadily throughout his whole life, that in the end it must have a very great and powerful influence. But it does not constitute the only motive to diligence: the love of character and honourable distinction, and the security acquired by good conduct, are not without their

effect; and by encouraging those officers who conduct themselves well, I believe you may have a more powerful and wholesome stimulus than any that exists at present under the system of fees. And I may further observe, that a system of fees operates a constant obstacle to progressive reforms which may in any manner interfere with the profit or revenue expected to be made by the officers."

Passing over some parts of the evidence, which we shall notice on another occasion, we come to the following statement:-

"That which may be called the income of the Court consists of two distinct parts: 1st. The interest of the invested sums constituting the Suitor's Fund; it amounts to 105,000*l.* a year, and is increasing; it is wholly independent of fees; 2nd. The amount of fees paid by the suitors, or of the taxation to which they are subjected. These fees, in the year ending in November last, produced 137,000*l.* Thus the whole income may be called 242,000*l.*; out of this income are to be paid, 1, the expenses of the Court, which do not reach 17,000*l.* a year; 2, the whole of the compensations and pensions, which have been the subject of so much complaint; these do not reach the sum of 60,000*l.* a year. These two sums constituting the whole amount of all the compensations and pensions, and all the expenses payable out of the income, fall very short of the dividends or income arising from the invested Sutors' Fund; and for the purpose of providing for the payment of compensations, pensions, and expenses alone, there is more than sufficient income without raising any fee whatever. But there is a 3rd head of payments to be made out of the income; viz. the salaries, which amount to about 130,000*l.* a year; and consequently, it is manifest beyond all doubt, that the suitors are subjected to taxation which would be wholly unnecessary if they were not charged with the payment of salaries.

And then his lordship observes,

"As litigation cannot be avoided; as you cannot prevent its being in many cases very troublesome, dilatory, and expensive, and attended with great anxiety; as I think it has been demonstrated that the evils of litigation, which cannot be altogether avoided, increase with its expensiveness; it follows that everything that can be done ought to be done to diminish the evils of litigation, by rendering it less frequent, less costly, and less vexatious. The very costliness of it has been made designedly the means of vexation and oppression. There are things of this kind which I fear cannot be altogether prevented. But a great deal may probably be done. You may make litigation somewhat less frequent, by making your laws as clear as the subjects to which they relate will admit of. You can make litigation a great deal less vexatious and expensive by having your modes of procedure more simple and intelligible, and you may further diminish litigation by diminishing the occasions for it;

nor is there, as it seems to me, any method which can be devised at all equal in efficiency to that of facilitating the administration of trusts and the taking and settlement of accounts; it is in the discussion of accounts, above all other things, that people otherwise not disposed to quarrel are apt to dispute, and if you wish to diminish the causes or sources of litigation, one principal way of doing it is, to provide easy means of checking and passing accounts. This is a main object of administrative suits; and I say, let them be as easy and as cheap as you can; let all accounts be, as far as is practicable, put into an easy course of examination and settlement, and you will put an end to much litigation that would otherwise be very rife. I am, therefore, of opinion that you ought not to regret it, if such administrative suits should escape taxation. Many persons who attend, as I think, but superficially to these things, proceed upon the notion that for all service done in the courts of justice the person who occasions the present trouble should pay for it. This seems to me to be a considerable mistake, for the party who in this way is made to pay is the very person who sets the law in motion, proves and makes public its useful operation, and from that operation produces examples and rules for the guidance of all others. The suitor is not the only person who profits by the lawsuit, for all other persons who are instructed and warned or guided by it, profit also.*

We shall take an early opportunity of adverting to those parts of his lordship's evidence which relate to the regulation and supervision of the officers of the Court,—the creation of a minister of justice,—and an improved mode of assessing and collecting fees, if fees are still to be imposed on the suitor.

THE ARCHES' COURT.

THE case of *Geils v. Geils*, which, from the accidental circumstances disclosed in it, attracted such an unusual degree of attention to the proceedings of the Arches' Court a short time since, was finally determined by the learned judge of that Court at the close of the last week. Sir Herbert Jenner Fust, in an elaborate judgment, which the newspaper reports state occupied six hours and a-half in the delivery, pronounced that Mrs. Geils was entitled to a divorce *a mensa et thoro*, upon the single ground that acts of adultery had been established against the husband, who was also condemned in the costs of the suit. It would be altogether beside our purpose, and perhaps beyond our province, to comment upon the circumstances of the case. We are justified in assuming that the facts warranted the judg-

ment, and we only desire to remind our readers how insignificant is the result compared with the expense, anxiety, and misery occasioned by the investigation. Mrs. Geils, after a lengthened and acrimonious contention, in which her nearest relatives and most faithful friends, as well as a multitude of persons in nowise connected with her, were subjected to the most painful and offensive imputations, is at length authoritatively informed, that she can be no longer compelled to live under the same roof with the man she had sworn at the altar of God to love and honour, but from whom she had long since by mutual consent separated, and who, after all that has passed, would possibly prefer any punishment to a renewal of cohabitation with her. The only punishment to which he is subjected, however, beyond the costs of the suit, is the loss of those conjugal rights he voluntarily abandoned. He is still entitled to the guardianship and control of the children of this unfortunate marriage, and Mrs. Geils, though not a wife *de facto*, carries with her the name through the world, and is not at liberty again to enter into the matrimonial state during the lifetime of her husband. The inefficiency of the Ecclesiastical jurisdiction in matrimonial causes has never been more palpably manifested than in this case; and we give utterance to a sentiment all but universal, when we hope that those tribunals may ere long be placed on something like a rational and satisfactory footing.

DIVIDING CAUSES OF ACTION IN THE COUNTY COURTS.

THE Term is fast drawing to a close without presenting any features affording matter for congratulation, if we except the judgment pronounced by the Court of Exchequer in the case of "*Grimley v. Ackroyd and another*," which will be found in a subsequent page, amongst our original reports.* The Court has determined, upon grounds, which, we confess, it seems to us might have been explicated with less of subtlety and more of simplicity and clearness, that the 63rd section of the act 9 & 10 Vict. c. 95, which provides, "that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits," does not permit the splitting of any demand in the nature of a tradesman's bill,

* There is also a decision in the Queen's Bench establishing the privilege of attorneys to sue in the Superior Courts.

the aggregate amount of which exceeds 20*l.*, for the purpose of bringing two or more suits in the County Courts. With respect to claims not precisely of the same nature or character, but which according to the established rules of pleading may be included in one declaration, the Court was not called upon, and has not in terms decided, that such claims shall not be divided for the purpose of bringing suits for their recovery in the County Courts. Indeed, some question is suggested as to the soundness of the decision the Court has come to in this case, from the anxiety expressed to guard against its being supposed that this judgment concluded the Court upon the application of the principle under a different state of circumstances. We should have been better pleased had it been explicitly laid down, without more, that where a cause of action exists upon a simple contract debt exceeding 20*l.* in amount, such cause of action cannot be divided. We have some reason to think that all the learned Barons who heard the arguments in, and decided the case of *Grimley v. Acroyd*, came unhesitatingly to this result, and that the qualifying terms were introduced in deference to the scruples of one of the judges, who entertained as little doubt as any of his learned brethren upon the case under consideration, but who was apprehensive that the naked announcement of the determination of the Court might be construed as equivalent to an intimation that where several causes of action exist, which may be included in the same declaration in the Superior Courts, the plaintiff in the County Court is bound to enter a plaint for the whole, or if he elects to proceed upon one cause of action, to abandon his right to recover upon others. Upon this point no decision has yet been given, and in fact the question did not arise in *Grimley v. Acroyd*.

It is satisfactory, at all events, to find it authoritatively settled that a party disputing an account, the result, perhaps, of numerous transactions, and a long course of dealing, is not liable to have every item made the subject of a distinct claim, and costs incurred exceeding ten times the amount of the alleged debt, in order that the superior courts of law may be ousted of their jurisdiction, and a matter of vital importance to both parties determined, perhaps, upon the unsupported testimony of one of them, or according to the discretion of a judge who, with the best intentions, may have had little or no practical experience in the application of legal principles.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

OATHS IN CHANCERY.

11 VICT., c. 10.

An Act for empowering certain Officers of the High Court of Chancery to administer Oaths and take Declarations and Affirmations.

[13th April, 1848.]

1. 5 & 6 Vict. c. 103.—10 & 11 Vict. c. 97.—*Clerk of enrolments and clerks of records and writs may take declarations.*—Whereas by an act passed in the 5 & 6 Vict., intituled "An Act for abolishing certain Offices in the High Court of Chancery in England," the clerk of enrolments in Chancery and the clerks of records and writs were empowered to administer oaths and take affirmations and attestations of Honour: And whereas it is expedient that the clerk of enrolments in Chancery and clerks of records and writs should be empowered to take such declarations as hereinafter mentioned: And whereas by an act passed in the 10 & 11 Vict., intituled "An Act for the Discontinuance of the Attendance of the Masters in Ordinary of the High Court of Chancery in the Public Office, and for transferring the Business of such Public Office to the Affidavit Office in Chancery," it was, amongst other things, enacted, That certain duties heretofore done and performed by the masters in ordinary in the public office should thereafter be done and performed by the clerk of affidavits and the assistant clerks of affidavits in manner directed by the said act, and William Thodey Smith was thereby appointed the second assistant clerk of affidavits under the said act: And whereas it is expedient that the clerk of affidavits and assistant clerks of affidavits respectively should be empowered to administer such oaths, and take such declarations and affirmations, and attestations upon honour, as hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled and by the authority of the same, That from and after the passing of this act it shall be lawful for every clerk of enrolments in Chancery and clerk of records and writs to take any declaration required for the purpose of enrolling any deed or other document in Chancery.

2. *Clerk of affidavits and assistant clerks may administer oaths and take declarations.*—That from and after the passing of this act it shall be lawful for every clerk of affidavits, assistant clerk, and second assistant clerk of affidavits of the High Court of Chancery, to administer all such oaths, and take all such declarations, affirmations, and attestations upon honour, as can now be administered or taken, or at any time hereafter may by any act of parliament be directed to be administered or taken, by or before a Master in Ordinary of the said Court.

3. *Persons swearing or declaring before such*

officers to be subject to penalties for perjury.—That all persons swearing, declaring, affirming, or attesting before any clerk of enrolments in Chancery, or clerk of records and writs, or clerk of affidavits, or assistant clerk, or second assistant clerk of affidavits, under this act, shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein, as if the matter sworn, declared, affirmed, or attested had been sworn, declared, affirmed, or attested before the High Court of Chancery, or any of the Masters in Ordinary thereof.

4. *Filling up vacancies in office of second assistant clerk of affidavits.*—That as often as the second assistant clerk of affidavits, or any of his successors, shall die or resign, or be removed from his office, the Lord Chancellor shall have power to appoint a second assistant clerk of affidavits in the room of such one who shall so die, resign, or be removed.

5. *Interpretation of "Lord Chancellor."*—That in construing this act the expression "the Lord Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and First Commissioner for the Custody of the Great Seal of the United Kingdom of Great Britain and Ireland, for the time being.

6. *Act may be amended, &c.*—That this act may be amended or repealed by any act to be passed during the present session of parliament.

STAMP DUTIES ASSIMILATION.

11 VICT. c. 9.

An Act to continue for Three Years the Stamp Duties granted by an Act of the Fifth and Sixth Years of her present Majesty, to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same.

[13th April, 1848.]

Most Gracious Sovereign.

1. 5 & 6 Vict. c. 82.—*Duties continued for three years.*—Whereas by an act passed in the 5 & 6 Vict., intituled "An Act to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same, until the 10th day of October, 1845," certain rates and duties denominated stamp duties, were granted for a term therein limited, and now expired; and by an act passed in the 8th Vict., the same rates and duties were continued for a further limited term, which will expire on the 10th day of October, 1848: We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in parliament assembled, towards raising the necessary supplies to defray your Majesty's public expenses, have freely and voluntarily resolved to continue the said rates and duties, and to grant the same to your Majesty for the period hereinafter mentioned; and do most humbly beseech your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with

the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all the several sums of money, and duties, and composition for duties, granted by the said first-recited act, and not repealed by any subsequent act, and also all duties now payable in lieu or instead of any of the said duties which may have been so repealed, shall be, and the same are hereby continued, and shall be charged, raised, levied, collected, and paid unto and for the use of her Majesty, her heirs and successors, for the term of three years, to commence on and to be computed from the 10th day of October, 1848.

2. *Recited acts and other acts continued in force.*—That the said first-recited act, and all and every other act and acts now in force in relation to the duties granted by the same act, shall severally be continued and remain in full force in all respects in relation to the duties hereby continued and granted, and all and every the powers and authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters, and things contained in the said acts, or any of them, and in force as aforesaid, shall severally and respectively be duly observed, practised, applied, and put in execution in relation to the said duties hereby continued and granted, as well during the term herein limited as after the expiration thereof, for the charging, raising, levying, paying, accounting for, and securing of the said duties and all arrears thereof, and for the preventing, detecting and punishing of all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if the same powers, authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters, and things were particularly repeated and re-enacted in the body of this act with reference to the said duties hereby granted.

3. *Act may be amended, &c.*—That this act may be amended or repealed by any act to be passed in this present session of parliament.

NOTICES OF NEW BOOKS.

A Selection of Legal Maxims, Classified and Illustrated. By HERBERT BROOM, Esq., of the Inner Temple, Barrister-at-Law. Second Edition. A. Maxwell & Son. 1848. Pp. 785.

We noticed the first edition of this work, which even then showed a great improvement on the Old Law Grammars and Books of Maxims. The present edition is much enlarged in its scope, and appears to us to be the best work now extant of its class, and admirably adapted for the use of the student who seeks to master the law as a science.

Publications of this kind form an important part of that series of works which we

hope to see completed for the benefit of the rising and future generations of lawyers. Mr. Broom's Book should first be carefully read throughout by the student, and scarcely a day should pass without reference to one or other of its pages, for the purpose of impressing on the memory the definitions and explanations it contains. Notes should be made during the course of reading of terms and expressions not perfectly understood, and recourse should afterwards be had to such works as Mr. Broom's, in order to solve the difficulty or refresh the memory. By these means a large amount of legal knowledge will be readily accumulated, and in searching for the point required, other information will be insensibly acquired. The student should never rest satisfied with an incomplete answer to his doubts, or an imperfect apprehension of the exact state of the law. Books of reference like the present, are of the greatest service to the professional reader, and we heartily recommend the present volume.

A Digest of the Examination Questions in Common Law, Conveyancing, Equity, Bankruptcy, and Common Law, from the Commencement of the Examination in Trinity Term, 1836, to the present time. Third Edition. By ROBERT MAUGHAM, Secretary to the Incorporated Law Society of the United Kingdom, and to the Board of Examiners. Maxwell & Son. 1848. Pp. 348.

SINCE the Examination was instituted, nearly 4,000 Questions have been propounded as tests for ascertaining, according to the language of the statute, "the fitness and capacity" of the persons applying for admission. Many inquiries have been made from time to time regarding the mode, the nature, and extent of the examination, and, accordingly, the questions have been classified under their appropriate heads for nearly ten years, whereby the student may be enabled to go through a regular course of reading.

This volume, therefore, contains a Digest of all these Questions, omitting only such as have been repeated in the same form, at different examinations. They have been arranged in such order as appeared most likely to facilitate the labours of the student, pursuing the method adopted in the standard treatises on Law and Practice.

The student, after reading one of the several series of questions, should apply himself to some improved treatise on the subject, which he will thus be induced to

read with attention and advantage:—just as the practitioner, who has to consult a report or a text book, steadily retains in his memory the information he seeks for his client's case.

After the student has read so much as relates to the questions in hand, he should close the treatise, and sit down and answer the questions. Having well considered his task and done his best, he should then test his success by reference to the book he has studied.

Thus, stimulated by a method which supplies an object and motive of industry and attention, the student will find the result impressed on his mind with a permanency no other course of study can effect.

In addition to the Digest, the questions during several recent Terms have been given in the precise order in which they were propounded from term to term, so that the student may see the mode and form of the examination, and prepare himself to pass the ordeal with satisfaction.

QUESTIONS AT THE EXAMINATION.

Easter Term, 1848.

THE Candidates at the Examination are required to answer in *Common Law, Equity*, and one other department of the remaining three. It is, we understand, deemed preferable, that such other department should be *Conveyancing*. We have, therefore, for the present, selected those three heads of the Examination and arranged the Questions in such order as will be found most useful to the students who have yet to prepare for their future examination.

It is supposed by persons unacquainted practically with the beneficial working of the examination, that a Digest and Classification of the Questions is not so useful as a verbatim copy. We have from time to time given them in both forms, so that the student may exercise himself methodically, and at the same time be acquainted with the course actually pursued at the Examination. We exhort them earnestly to abjure the answers prepared to the Questions, and to read and answer for themselves. No real benefit can be derived from such fallacious helps.

COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

Jurisdiction and Actions.

Is there any, and what separate jurisdiction belonging to each of the Superior Courts of Common Law not possessed by others?

State the several times within which actions must be brought.

For what damages are hundredors now liable, and what are the necessary steps to be taken before the writ is issued, and against whom must it be?

How should a person proceed for damages against a wilful trespasser when the damages would not amount to 5*l.*?

Trial and Evidence.

What is full notice of trial for the adjournment day in London, and what short notice; and when must they be given?

In what cases can a witness be examined notwithstanding he may be interested, and how will the judgment in the suit operate for or against him in any subsequent suit?

Judgments and Costs.

At what period must a motion in arrest of judgment, or for judgment *non obstante veredicto*, be made?

Judgment against two defendants and one dies,—what is necessary to enable the plaintiff to take out execution, and against whom will the execution issue?

If either plaintiff or defendant die after interlocutory, and before final judgment, will the action abate, or how must you proceed to final judgment?

On a judgment *non obstante veredicto*, is either party entitled to costs?

When distinct issues are found for the plaintiff and for the defendant, is the allowance to witnesses the same to the party having the general costs, as to the party who has only succeeded on particular issues; and how does the form of affidavit of increase differ?

Warrants of Attorney.

What is required to enter judgment on a warrant of attorney above one and under ten years old?

What is now required to attest the due execution of a warrant of attorney or cognovit; and must it be the same in all cases?

Award.

Within what time must a motion to set aside an award be made?

Highways.

How are highways to be now stopped up, diverted, or turned?

EQUITY AND PRACTICE OF THE COURTS.

Jurisdiction and Principles of Equity.

State some of the principal subjects as to which, practically, Courts of Equity have exclusive jurisdiction.

What are the peculiar powers possessed by Courts of Equity with respect to matters in contract, and matters of anticipated injury?

State some of the maxims or rules which govern or indicate the principles of Equity jurisprudence.

What is the doctrine of election?

What are equitable assets, and is any distinction made in distributing them between different classes of debts?

What is meant by "Marshalling Assets"?

Pleading, Evidence, and Practice.

Explain the object of a bill of interpleader in equity.

What is the essential condition to a Court of Equity entertaining a bill to take evidence *de bene esse*?

Is the filing a bill praying an injunction necessary to the application for one, and is any notice required of the application?

What is the mode of taking evidence in equity?

After subpoena served, what time is allowed to a defendant to appear and answer?

What is the course of proceeding to confirm a general report?

What parties are usually allowed to attend the taxation of costs?

What is necessary to enable parties to receive cash from the Accountant-General, either during the lifetime or after the death of the party to whom, or to whose representatives, the order directs the money to be paid?

CONVEYANCING.

Estates.

What is an estate of freehold?

Of what sorts are estates less than freehold?

What is an estate at sufferance?

What are the remedies of landlords for the recovery of possession from tenants at sufferance?

Of what sorts are estates in expectancy?

Describe estates in remainder.

What is an estate in reversion?

What is tenant by the curtesy? and what are the requisites necessary to make such an estate?

What is tenant in dower?

Who may be endowed? and of what may the tenant be endowed?

Incorporeal Hereditaments.

Explain the meaning of an incorporeal hereditament.

State the sorts of incorporeal hereditaments.

Mortgages.

Define the meaning of the word "Mortgage."

Describe a mortgage.

What are the rights of a mortgagee?

NOTES OF THE WEEK.

ADMISSION OF SOLICITORS.

THE Master of the Rolls has appointed Tuesday, May 9, at the Rolls Court, Chancery Lane, at a quarter past Three in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Monday, the 8th.

RECORDS OF THE COURTS.

THE Court has ordered that in future no record of the Court shall be produced at any trial without an order first obtained from the Court, or a judge, authorizing its production.

RIGHT OF ATTORNEY TO SUE IN SUPERIOR COURT.

The Court of Queen's Bench has decided (as we expected) that the right of an attorney to sue in the Superior Courts is not taken away by the County Court Act. Lord Denman, in delivering the judgment, said—

“The 67th section of the 9 & 10 Vict. c. 95, had been relied upon, which enacted, that no privilege, except as thereafter excepted, should be allowed to any person to exempt him from the jurisdiction of any court holden

under the act; and it was contended that those words were large enough to deprive the plaintiff of his costs. But those words did not apply to the plaintiff suing in the Superior Court, but to a debtor who was being sued in the County Court, and who was placed under its provisions. Indeed, it was difficult to see how a creditor who might sue in a Superior Court could be said to be within the jurisdiction of the County Court.”

We shall give an early report of the decision.

CHILTON v. CROYDON RAILWAY COMPANY.

The application to set aside the verdict on the ground of the excessive amount of the damages, 500*l.*, has failed. The Court being equally divided, no rule was granted, and consequently the verdict remains in force.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Newton v. Ricketts. Feb. 9, 1848.

CONTEMPT.—COSTS.—TAXATION.

The proceedings under an order for the taxation of costs are not irregular, because the party prosecuting them may be in contempt during part of the time.

THIS was a motion to discharge a subpoena issued to enforce the payment of the costs of a former motion, on the ground that the Master had proceeded with the taxation of them while the party to whom they were to be paid was in contempt for not answering.

Mr. Kindersley, and Mr. Cooper, for the motion.

Mr. Roupell and Mr. Hall, contra, contended, that the Taxing Master had no authority to suspend the prosecution of the order to tax, because the party might be in contempt, and referred to *Wilkin v. Nainby*, 4 Hare, 473; *Wilson v. Bates*, 3 M. & C. 147; *Ricketts v. Mornington*, 7 Sim. 200.

Lord Langdale said that the taxation of costs was only a mode of ascertaining the quantum of costs, on the right to which the Court had already adjudged. He was now asked, after the whole proceedings upon the order had terminated, to set them aside as irregular. But he was of opinion that a proceeding of this nature was not affected by the contempt, and must therefore refuse the motion.

Tanner v. Tanner. Jan. 26 & 27, 1848.

WILL.—SHARES.—ANTICIPATED PAYMENT.

Bequest of “all my share and interest” in the shares of a railway company held to pass the right to sums paid by the testator in anticipation of calls not made at his death, and to the interest payable in respect of those sums.

IN this case there was a question of the effect of a bequest to *A.* and *B.* of “all the share and interest” of the testator in certain shares of the Bristol and Exeter Railway: whether these words passed sums paid by him in anticipation of calls, and the interest payable in respect of those sums, or were limited to the amount of the calls made during his life, and which alone he could have been compelled to pay.

Mr. Turner, Mr. Dickenson, Mr. Kindersley, and Mr. Selwyn, for the different parties.

Lord Langdale expressed his opinion that the payment made by the testator was a purchase of the full right to all the shares, and that as the words in question would pass the shares, the specific legatees of the shares were entitled to the interest, which must go with the right to the shares.

Vice-Chancellor of England.

In re The London and North-Western Railway Company. March 15, 1848.

PAYMENT OF PURCHASE-MONEY OUT OF COURT.—LANDS CLAUSES CONSOLIDATION ACT.—COSTS.

Where a railway company purchase lands belonging to a tenant for life, but subject to an annuity in favour of two persons prior to the estate for life, on a petition for payment of the purchase-money out of court and investment, the railway company ordered to pay the costs of both the annuitants.

THE London and North-Western Railway Company purchased certain lands at Husband Bosworth, in Leicestershire, for the purposes of their railway. The land belonged to a tenant for life, who had conveyed his interest to a trustee, and there was an annuity chargeable on the land in favour of two annuitants, and

which was prior to the interest of the tenant for life. An order had been obtained on petition under the 80th section of the Lands Clauses Consolidation Act for the payment out of court and the investment in government securities of the purchase-money. The petition was presented by the tenant for life and one of the annuitants. The other annuitant had been served with the petition, and had appeared, but the railway company refused to pay his costs.

Mr. F. J. Wood, for the petitioner, contended that the second annuitant was entitled to his costs.

Mr. Speed contra.

The Vice-Chancellor said, that as the annuity was prior to the interest of the tenant for life, the company must pay the costs of bringing the annuitant before the court.

Vice-Chancellor Knight Bruce.

Wren v. Bradley. Jan. 19, 21, & 26, 1848.

GIFT TO A WIFE TO CEASE ON COHABITATION WITH HER HUSBAND.

A testator, by his will, gave his daughter, a married woman, an annuity during his wife's life, but to cease so long as she lived with her husband: he also gave a share of the interest of personal estate to her during her life if she should continue to live apart from her husband, but if she should at any time cohabit with him, then the same to go to other parties. At the date of the will the daughter was living apart from her husband, but she cohabited with him before and at the death of the testator: Held, that she was entitled to the annuity and share of the interest of the personalty, notwithstanding the cohabitation.

HENRY POOLEY, by his will, dated in 1838, directed his trustees, out of the interest of certain personalty, to pay an annuity to his wife, and an annuity of 30*l.* to his daughter, Ann Jeffries Wren, the wife of Abraham Wren, in case she should be living apart from him, and should continue so to do during the life of his, the testator's wife; and he declared that if she should cohabit with her husband, the annuity should, during such cohabitation, absolutely cease. And after the decease of his wife, the testator directed his trustees to pay one-third of the interest of certain personal estate to Elizabeth Bradley, another married daughter, for life; another one-third to Sarah Picton, another married daughter, for life; and as to the remaining one-third, upon trust to pay the same to the said Ann Jeffries Wren, during such time as she should continue to live apart from her said husband, but should she at any time cohabit with him, he directed that during such time as she should do so, the same should be paid to Elizabeth Bradley and Sarah Picton, if living, or if dead, to their children; and after the death of Ann Jeffries Wren, to divide her one-third of the capital between her children by any other husband than Abraham Wren, and in default of such children, equally be-

tween the other sisters and their children. At the date of the will, Ann Jeffries Wren was living apart from her husband, but she returned to cohabitation with him with the knowledge of the testator, and so continued up to his death, in May, 1841. Both the other daughters had children. The bill was filed by Ann Jeffries Wren, by her next friend, against the executors, the other daughters and their husbands and children, and her husband, charging that the condition attempted to be attached to the annuity and life interest to the plaintiff was wholly and absolutely void, and that such gifts became at the death of the testator payable to her, and it prayed a declaration accordingly, and accounts of the testator's personal estate.

Mr. Russell and Mr. Follett, for the plaintiff, contended that the obvious object of the testator was, to attach the condition for the purpose of effecting a separation, or of enforcing any existing separation between the husband and wife. That such a purpose was contrary to the policy of the law, and *contra bonos mores*, and so it was held in *Brown v. Peck*, by Lord Northington, 1 Eden, 140. In that case an increased allowance was given to a married woman if she lived away from her husband. The principle of that case is recognized in *Williams on Executors*, vol. 2, p. 1002, and by Mr. Roper in his book on *Legacies*, vol. 1, p. 757, 4th ed. In the present case the testator must at the time he made his will have had in his contemplation a future separation, as well as a present one, from the words he has used, and that he had a strong personal enmity to the husband was plain from the gift over to her children by any husband other than Abraham Wren. As the condition which was intended to be imposed was illegal and void, Mrs. Wren was by law entitled to take the benefit free from it; and so it was held in *Tenant v. Braie*, Tothill, p. 141, where the testator gave his daughter a sum of money if she would be divorced from her husband. The same principle was acknowledged in *Webb v. Grace*, 10 Jurist, 1049. In *Hartley v. Rice*, 10 East, 22, a wagering contract that a man would not marry in six years was held void as being against the policy of the law, the tendency of it being to discourage marriage. The cases of *Jones v. Waite*, 5 Bing. N. C. 356; *Cocksedge v. Cocksedge*, 14 Sim. 244; and *Reynish v. Martin*, 3 Atk. 330; that is, from the time of Lord Hardwicke to the present day, the same was considered to be the effect of such a condition annexed to a gift.

Mr. Wigram, for the defendants, contended that the gift was wholly void, and that the gift over to the other daughters took effect. If Mrs. Wren had been living apart from her husband at the testator's death, she might have taken the benefit so long as she so lived apart from him, but she never was in a situation to claim any benefit at all. Lord Thurlow, in *Scott v. Tyler*, 2 Dick. 722, laid it down, on the authority of Godolphin, that a gift may be of the use of a thing during celibacy, and if so,

it was plain it could be no objection that the interest was given during separation. But there was no separation at the death of the testator, and therefore Mrs. Wren did not in effect answer the description of situation the testator indicated. It was the same in principle with *Rushton v. Cobb*, 5 Myl. & Cr. 145, which was contended to be a void gift from the beginning. There, although the Lord Chancellor held the gift to be good, still in his judgment he pointed out the principle contended for on behalf of the defendant. The true effect of the will was to give, or an attempt to give, a benefit clogged with a condition illegal, contrary to public policy, and void; and the condition being such, the gift failed altogether, and those who were named by the testator as ultimate takers became at once entitled to the benefit.

His Honour said, that his present impression was, that it would be more consistent with authority to decide in favour of the continuance of the interest, rather than against it. He spoke of authority only, and not of principle. He would reconsider the matter, and, if need be, call for a reply.

Jan. 26th. His Honour said, that his impression remained unchanged. The will related to personalty alone. It was admitted that Mrs. Wren was, at the time of the execution of the will, living apart from her husband, and that they afterwards lived together during the life of the testator, and so continued up to his death. The point in dispute was one of no little difficulty. The words of the gift of the annuity and of the other gift were not exactly similar. In the absence of authority he should have felt disposed to decide against the plaintiff, but as authority was produced, he should decide according to it. The principle of the civil law relating to such matters appeared to have been in some degree adopted by the law of England, and the law of England on the authorities cited seemed to bind the Court to decide in favour of the plaintiff. The object of the testator seemed to be to prevent a reconciliation, and to obstruct their future cohabitation. In his Honour's judgment, both technical and moral justice were in favour of a decision for the plaintiff.

Queen's Bench.

(Before the Four Judges.)

Turner v. Hartley. Easter Term, 1848.

STATUTE OF FRAUDS.—AUCTION.

An auctioneer, at the time of the sale, wrote the name of a bidder, as that of a purchaser, against the description of a piece of land sold by auction. There was no name of a vendor in the catalogue in which the bidder's name was thus written. The conditions of sale referred to in the catalogue were afterwards signed by A. B. as attorney for the vendor: Held, that there was not in this case any binding contract within the Statute of Frauds.

THIS was an action brought to recover the

value of land alleged to be sold by the plaintiff to the defendant. The property was sold by auction, and at the time of the sale the auctioneer wrote in the catalogue of sale, and opposite the lot in question, the name of the defendant as the purchaser. The catalogue of sale did not contain the name of the vendor, or state to whom the property belonged, but there was the usual reference made to the conditions of sale, and at the foot of those conditions of sale, soon after the lot had been sold, a memorandum in writing was made of the contract, and signed by A. B., as attorney for the vendor, but the name of the vendee did not appear on that document. The defendant contended that he was not the person who made the highest bid for the property, and refused to complete the purchase. The cause was tried at the Lancaster Spring Assizes, 1847, before Mr. Baron Alderson, and the plaintiff was nonsuited, the question being reserved for the consideration of this Court, whether there was any note or memorandum in writing signed by the defendant sufficient to satisfy the 4th section of the Statute of Frauds.

Mr. Baines and Mr. Edward James showed cause. In order to satisfy the 4th section of the Statute of Frauds, the name of the vendor should have appeared on the catalogue of sale at the time the name of the vendee was placed there by the auctioneer, who is taken to act as the agent for both parties. *Wheeler v. Collier*,^a *Champion v. Plumner*,^b *Laythroap v. Bryant*,^c *Kenworthy v. Scholfield*,^d *Boydell v. Drummond*.^e But assuming that the catalogue of sale and the conditions of sale can be connected, still the bargain is not brought within the Statute of Frauds, because before the name of the vendor appeared on the conditions of sale the vendee had refused to complete the contract.

Mr. Martin, in support of the rule. The rule of law, with reference to purchases under the Statute of Frauds is, that if the document signed by the vendee refers to another document, parol evidence is admissible to show the nature of such other document. In the catalogue of sale in which the name of the vendee does appear reference is made to the conditions of sale where the name of the vendor appears, and these two documents constitute a contract sufficient to satisfy the Statute of Frauds. *Hinde v. Whitehouse*.^f

Lord Denman, C. J. I am of opinion that this rule must be discharged. We should be repealing the Statute of Frauds if we decided that there was a sufficient contract to maintain this action. The nonsuit was right.

Mr. Justice Coleridge. I am of the same opinion. The auctioneer here signed the paper, and the defendant walked away. At that time the name of the seller was not upon the paper to which the auctioneer signed the defendant's name. The seller's name was introduced after-

^a Mood. & Malk. 125.

^b 1 Bos. & Pul. N. R. 252.

^c 2 Bing. N. C. 735.

^d 2 B. & C. 945.

^e 11 East, 142.

^f 7 East, 558.

wards, and the defendant, when spoken to, denied at once that he had bought anything.

Mr. Justice *Wightman*. In order to fulfil the provisions of the 4th section of the Statute of Frauds, the name of the seller must be on the contract at the time of the signing of it by the party who is to be bound as purchaser. It cannot be added afterwards. When the defendant's name was signed to this paper it was a mere memorandum; it was nothing which could bind him. The nonsuit was right.

Mr. Justice *Erle*. A writing to be valid as a contract must contain all the essentials of one. The name of the seller was an essential part of the contract. Without it this paper was not a writing within the Statute of Frauds.

Rule discharged.

Queen's Bench Practice Court.

Matter v. Foulkes. April 26, 1848.

DISTRINGAS.—LUNATIC.

Where the proper number of calls had been made at a lunatic asylum where a defendant was confined, with a view to serve the defendant (who had become a lunatic) with the copy of a writ of summons, and the defendant was informed that it was not consistent with the rules of the asylum to allow the lunatic to be seen, and the defendant thereupon explained the purport of his visit, and left a copy of the writ with the keeper; the Court granted a rule absolute for a distringas, but directed it to be served on the defendant's wife, and at his last place of residence, as well as at the asylum.

Rowsell moved for a distringas to compel appearance. The peculiarity of the case was that the defendant is a lunatic, and is confined in a lunatic asylum. There had been the usual number of calls made at the asylum, but the defendant was told by the keeper under whose care the defendant was that he could not see the defendant, as it was inconsistent with the rules of the asylum to allow him to be seen, upon which the defendant explained the purport of his calls, and left a copy of the writ of summons with the keeper. Under these circumstances the question now was whether the Court would deem this a sufficient service on the defendant to entitle the plaintiff to a rule absolute in the first instance, or rule *nisi* only. In the case of *Banfield v. Darell*, 2 D. & L. 4, the court granted a distringas to compel an appearance where on application made on two occasions at the residence of the defendant who was a lunatic, the defendant was informed that he could neither see the lunatic nor the keeper, the defendant having on the last occasion explained the purpose of his visit, and left a copy with the servant, but in this case the court merely granted a rule *nisi*. There was however a case in the full Court of Exchequer, of *Limbirt v. Hayward*, 13 M. & W. 480, in which the Court granted a rule absolute in the first instance. The only difference between that case and *Banfield v. Darell*, being that there it was stated that the defendant had called at the dwelling-house of the defendant,

where his wife was still carrying on his business, the defendant himself being confined at St. Luke's Hospital, where the defendant had also called but been refused admittance by the governor. In that case the Court granted a rule absolute, and directed the writ to be served on the wife.

Erle, J. Is the defendant in this case without family or connections.

Rowsell. No, it is understood that, as in the last case cited, the wife is carrying on the husband's business, but this is not stated in the affidavit.

Erle, J. I know of no reason why what has been done in this case should not be deemed good service; you may therefore take your distringas, but I think the writ should be served on the wife of the defendant, and at the last place of residence as well as the asylum.

Rule accordingly.

Stockbridge v. Bancombe,.

DISTRINGAS.—SHERIFF.

Where it appeared that the sheriff had been called on the 26th of November to return a writ of distringas, but no return was made until the 22nd of March; but it did not appear that plaintiff had suffered any injury by the delay of the sheriff, the Court refused to grant an attachment against him.

Pattison moved for an attachment against the late sheriff of Sussex for not returning a distringas issued to compel appearance in this cause. It appeared by the affidavits that the sheriff had been called to return the distringas on the 26th of November last, but no return was made until the 22nd of March; this was clearly a contempt, as he was bound to make his return within eight days after being called to return.

Erle, J. I do not see what your object is in making this motion. In strictness the sheriff is in contempt, but no doubt this is a mere formal omission; and why should I interfere? Besides this is a mere informality, and you have let a term go by.

Pattison. But the sheriff is not hurt by the delay, and it is not unreasonable delay, as the parties were not aware of the neglect of the sheriff until the 9th of March. There are numerous cases which show that subsequent obedience to a rule to return a writ is no answer to a motion for an attachment. *Howitt v. Rickoby*, 9 M. & W. 52. As to the delay there is no general rule as to the lapse of time which shall be deemed sufficient to discharge the sheriff from attachment; *Rex v. the Sheriff of Surrey*, 9 East, 497; in that case Lord Ellenborough lays it down that the rule must be moved for within a reasonable time, according to the circumstances of the case.

Erle, J. I think you have slept too long on your right. There has been no substantial grievance in this case, or it would have been brought before the Court; no doubt a mere formal omission to return *nulla bona*. I certainly shall not grant a rule merely to make the sheriff pay the costs of it. Rule refused.

Common Pleas.

Hoare v. Lee. Easter Term, 1848.

DECLARATION IN TRESPASS—ONE OF TWO COUNTS STRUCK OUT.

Where a declaration in trespass contained a common form of count de bonis asportatis, and a second to recover double value under 2 Wm. and M. sess. 1, cap. 5, sec. 5, in respect of the same goods: Held, that the plaintiff had been properly required by a judge's order to elect one of such two counts, and in default, subjected to having the second count struck out.

Trespass. The first count of the declaration was in the common form *de bonis asportatis*, and the second was upon the statute 2 Wm. & Mary, ses. 1, cap. 5, sec. 5, to recover double value for a seizure and sale of the same goods by virtue and under colour of an alleged right to rent due. An order made by Mr. Justice Cresswell on the 14th of February, required the plaintiff in three days to elect which of those two counts should be struck out, and ordered, in default of such election, that the second count be struck out.

W. H. Cooke now applied for a rule to show cause why the order of Mr. Justice Cresswell should not be set aside, on the ground that the plaintiff was entitled to retain both counts in his declaration. The evidence necessary to support one count was different from that required for the other, and the cause of action in each was quite distinct. The statute on which the second count was framed, rendered it necessary to prove both a seizure under colour of rent and a sale, and upon the first count the plaintiff could not recover the damages to which he would be entitled in the event of the first count being sufficiently proved. *Thornton and others v. Whitehead*, 1 M. & W. 14; *Gilbert v. Hales*, 2 D. & L. 227; *Cahoun v. Burford*, 2 D. & L. 234; *Bulwer v. Bousfield*, 16 L. J. Q. B. 237; *Vaughan v. Glenn*, 3 M. & W. 577, are authorities in the plaintiff's favour.

Wilde, C. J. Suppose you are not entitled to recover the same damages on both counts, still against you there are the terms of the rule of Hilary Term, 4 Wm. 4, that "several counts in trespass for acts committed at the same time and place, are not to be allowed." Here there are two counts addressed to acts committed at one and the same time, and therefore the case is within the express terms of the rule. My impression is, that the plaintiff would be entitled to recover for the simple trespass alone, under the second count, but at all events I cannot say, upon the rule, that these counts can consistently stand together.

Cresswell, J. Is it anything more than one and the same trespass, aggravated by special circumstances? The sale necessary to be proved under the second count is only an aggravation of the same trespass as that in the first count.

Cooke. The sale was a subsequent act of trespass, giving rise to a new statutory cause of action.

Wilde, C. J. It is little more than a statement of the same trespass, with special damage, under the statute. If the statute did not exist, the circumstances might be alleged as an aggravation. On the whole, I think the order correct, and that the rule must be refused.

Collman, J., Cresswell, J., and Williams, J., concurred.

Rule refused.

Exchequer.

Grimley v. Ackroyd. April 29, 1848.

COUNTY COURTS.—SPLITTING CAUSE ACTION.

Where a person gives a general order for goods to a tradesman, and goods are consequently supplied from time to time, the tradesman cannot afterwards split his demand by suing for the amount of each supply, but must sue for all if above £20 in one action.

This was a rule nisi for a prohibition to Mr. Parham the judge of the County Court for Shipston district in Worcestershire, against proceeding further in 228 plaints at the suit of the plaintiff for which summonses had been served upon the defendant. The rule was obtained in Michaelmas term by Martin. It appeared from the affidavits on both sides, that the total amount of the sums claimed in the 228 plaints, amounted to 303*l.* 19*s.* only, that the amounts in the several summonses varied from 5*s.* to 10*l.*—but all related to one cause of action which arose under these circumstances. The defendant who was a contractor for making a part of the Oxford, Worcester, and Wolverhampton Railway, had a conversation with the plaintiff, a grocer, respecting the supplying of the labourers on that line with provisions and other articles according to written orders, which would be given from time to time to the men by his sub-contractors, Chadwick and Edwards. These orders, of which upwards of 3000 had been issued, were in this form:—

"Middleton Hill,
July 14th, 1847.

"Mr. Grimley, let the bearer have goods to the amount of (five) shillings.

Chadwick and Edwards."

Upon these orders being presented to the plaintiff, he supplied the bearer with the amount in such goods as he required, and the sub-contractors on settling every Saturday with the men, deducted the amount of these orders in their account as so much money paid. Goods to a large amount having been supplied under this arrangement, and upwards of 300*l.* finally remaining unpaid, the plaintiff commenced in August last a plaint against the defendant for

10*l.* in the above County Court, and recovered. The costs of that suit were upwards of 10*l.*, and it was sworn on behalf of the defendant, that that would probably be the average amount of costs in each of the present plaintiffs, if they should be proceeded with. The defendant denied his liability to the plaintiff's claim altogether. The latter having established his claim by the first plaint, sued out 228 other plaintiffs, on the 17th September 1847. Each of these seemed to be for the amount supplied to each labourer. On the day named in the plaintiffs for appearing before the court, the defendant appeared and applied for an adjournment, in order that he might apply for a writ of prohibition. The adjournment was granted upon payment of the costs of the day, 11*l.* 16*s.* The Clerk of the County Court demanded 17*l.* for orders of adjournment, considering himself entitled to the costs of an order in each case separately; this however was refused, and one order was ultimately drawn up for the whole.

Whitehurst and *Pigott* showed cause in Hilary Term and cited *Anon.*, 1 Vent. 65; *Girling v. Alders*, Id. 73; *R. v. Sheriff of Herefordshire*, 1 B. & Ad. 672; *F. N. B.* 46; *Carrall v. Morley*, 1 Q. B. 18. Bac. Ab. Prohibition (K.) Com. Dig. Prohibition (A. 1 F. 1) *Neale v. Ellis*; 1 Dow. and Lownd. 163.

Martin and *H. Hill* in reply, cited 2 Keb. 617; *Lord Bugot v. Williams*, 3 B. & C. 235; *Dunn v. Murray*, 9 B. & C. 789; *Clark v. Askew*, 8 Ea. 18; *Porter v. Philpot*, 14 Ea. 344; *Shadrick v. Bennett*, 4 B. & C. 769.

Cur. adv. vult.

The judgment of the Court was now pronounced by *Pollock*, C. B., who after stating the facts of the case, said the question for the consideration of the Court turned upon the meaning of the words "cause of action" in the 63rd section of the County Courts act, 9 & 10 Vict. c. 95. The rule of the common law with regard to the jurisdiction of the County Courts was *Quod placita de catallis debitis, &c.; quæsumam* 40*s.* *attingunt vel eam excedunt secundum legem et consuetudinem Angliæ sine brevi Regis placitari non debent.* (2 Inst. 312). Their jurisdiction was thus limited to sums under 40*s.*, and if an entire debt amounting to more than that sum were divided, so that each part should be under that amount, yet they could not entertain plaintiffs for each. It had been laid down, even that if one owed another only five marks, there could not be a several plaint for each mark. So it had been resolved that "if there be several contracts between *A.* and *B.* at several times for several sums, each sum under 40*s.*, and they do all amount to a sum sufficient to entitle the superior court; they shall be there put in suit." *Anon.* 1 Vent. 65. So in another case where "one contracted with another for divers parcels of malt, the money to be paid for each parcel being under 40*s.*; and he levied divers plaintiffs thereupon in the said court. Wherefore the court here granted a prohibition; because though there be several contracts, yet forasmuch as the plaintiff might

have joined them all in one action, he ought so to have done and sued here, and not put the defendant to an unnecessary vexation, no more than he can split an entire debt into divers, to give the inferior court jurisdiction in *fraudem legis.*" *Girling v. Alders*, 1 Vent. 73. The reason here given was a satisfactory one; for it would be extremely vexatious for a plaintiff, from whom goods had been purchased in small pieces, at several prices, at different times, by distinct contracts, either payable immediately or on credit which had expired, instead of including all in one action—which he could do after the debt became all due, should divide the debt into several debts, and sue for each in a separate action in the county courts, which could give no adequate relief by consolidating them in the exercise of their jurisdiction, if they had any, as a superior court would; for they could not unite them so as in the aggregate to exceed 20*l.* The extent to which that vexation might be carried might be illustrated by the present case, in which it was seen that there were 3000 different tickets, and consequently 3000 different items or separate contracts. It was quite true, indeed, that when each contract became due in cash the creditor might, in the absence of any implied contract to the contrary, immediately sue for it; but when several debts had all become due on similar contracts, he could unite them in one count in debt as one entire debt, and there appeared to be no good reason why he should not do so. The case of "*The King v. the Sheriff of Herefordshire*," 2 B. & Ad. 672, had been cited in opposition to this doctrine. There a carrier who had conveyed goods, at two separate times, a month intervening, brought two actions in the County Court, one for each of the sums, and Lord Tenterden then said:—"This case does not come within the rule of law which prohibits the splitting of a cause of action into several portions for the purpose of commencing suits for each in an inferior court: to be so, the cause of action must be one and entire. But in this case the two items are perfectly distinct debts, the one having no connection with the other. When the defendant incurred the debt stated in the first item the plaintiff might have sued him for it in the County Court, and his having incurred another and distinct debt with the plaintiff afterwards should not, I think, have the effect of depriving the plaintiff of his remedy in the County Court for the first debt; and if he may still have that remedy for the first debt, he has it of course for the second also." That case, however, might be distinguished, because there the debts were treated as being entirely distinct and separate from each other, the one having no connection with the other. But in the case of a running account with a tradesman the items were generally connected, the different contracts being usually made with the understanding that if not paid until after others had been made, they were to form part of the same debt, or that the several items were to be united in one bill, and no other conclusion could be

easily drawn as to the understanding in the present case. The result of that decision was to render it impossible to rely entirely on the authority of the former cases, which otherwise would have disposed of the present question, supposing that it was to be decided by the rules of the common law. It did not however depend upon those authorities, but upon the construction of the recent act, the 9th and 10th Vict., c. 95. By the 58th section the new courts had jurisdiction in all personal actions, with certain exceptions, where the debt or damages were not more than 20*l.*, whether as a balance of account or otherwise. That phrase had probably been introduced in consequence of the decisions on the provisions of some of the Courts of Requests Acts, that they should not extend to any debt for the balance of an account originally exceeding the amount of the jurisdiction, as in *Forster v. Philpot*, 14 East, 355. Be that as it might, it could not be doubted that the law was made to give jurisdiction where the debt became constituted of various items altogether not exceeding 20*l.* at the time of the suit. They had next to consider the effect of the 63rd section, and the whole question was as to the meaning of the term "cause of action" in that section, by which it was enacted "that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts; but any plaintiff having cause of action for more than 20*l.*, for which a plaint might have been entered under this act if not for more than 20*l.*, may abandon the excess, and thereupon the plaintiff shall, upon proving his case, recover to an amount not exceeding 20*l.*, and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action." The question then was, what was the construction of the words "cause of action?" The term debt or damage was not used in the statute, but the more expressive term "cause of action," which did not necessarily mean cause of action upon one single contract, but might mean a cause of action upon several contracts. It had been pointed out by Baron Parke, in *Hesketh v. Fawcett*, 11 M. & W. 360, that one cause of action might arise from ten different employments or contracts; as one count in debt or assumpsit, which must be taken to involve only one cause of action, was commonly founded on several distinct contracts. It had been urged at the bar that it would have been unnecessary surplusage to provide that one cause of action in one entire contract should not be divided; but though that argument was of some weight, yet, when it was considered to what abuses the narrower construction of the term might lead, (which was strongly exemplified in the present case, wherein 228 actions had been commenced, and 3000 might have been,) the Court thought they might safely conclude that the term "cause of action," ought to be interpreted "cause of one action," and not be limited to a right of action on "one separate contract." But, on the

other hand, if the term was to comprise all sums that might be included in one count for debt, for work and labour, for goods sold, and for occupation, their total, if connected with each other, might be included in one plaint, and would be precluded from being divided under this particular clause, if indivisible, and the creditor who brought an action for only one part would virtually abandon the claim to the remainder by the application of the latter part of the 63rd section. In such a case Mr. Justice Coleridge had held that a similar clause in the Brighton Court of Requests Act, the 3rd and 4th Vict., c. 10, sec. 24, did not apply. *Neale v. Ellis*, 1 D. & L. 163. In that case the demand had been for three distinct things, a horse sold, goods sold, and rent; but that learned judge had taken a distinction between that case and one where a debtor had a bill running from day to day. In such a case each item of goods supplied, or work done, constituted a separate contract, so that after the stipulated price became due the tradesman could sue for one item, yet still the understanding was undoubtedly that the several items should be united, and so form one entire demand; and, doubtless, if, after several items had been added to the first, the tradesman were to bring a separate action for each item, as for a distinct debt, a superior Court would stigmatise such a proceeding as vexatious. It appeared, then, that a great inconvenience would follow if the term "cause of action" were interpreted to mean "cause of action" on one separate contract, and also if the distinction were to be that it was intended to cover all contracts existing, however dissimilar in character, that could be included in one *indebitatus* count, which, according to the modern practice, might comprise any number of separate unconnected contracts, whenever made, each having ended in a debt before the commencement of the suit. As some extension must be given to the former construction, so some restriction must be put on the latter, and the Court thought that they ought to hold that the 63rd clause did apply to the present case; whether to all debts which could be comprised in one description, in one count, or not, the Court need not, in the present instance, determine; but they all agreed that it applied at all events to the case of tradesmen's bills, in which one item was connected with another, and the dealings were not intended to terminate with one contract, but to be continuous, so that one item, if not paid, should be united with another, and so form one entire demand. If that demand were to exceed 20*l.* it would of course cease to fall within the jurisdiction of the County Court Act; and therefore the Court were of opinion, on the facts which were disclosed in the affidavits before them, that all the debts claimed fell within that description—the total greatly exceeding 20*l.*—and that they ought not to have been split into different suits. Whether, if the total had only amounted to 20*l.*, and the items then were separated and sued for by separate plaints—the total being within the jurisdiction

of the County Courts, which could then have given adequate relief—the suits could have been prohibited, was a question which need not in the present instance be discussed. But when the total exceeded that amount, the County Court had no jurisdiction, and, therefore, the prohibition applied for by this rule ought to go.

Mr. *Baron Parke*.—The prohibition can now, if it is wished, be taken to a court of error.

Rule absolute.

Bankruptcy.

In re Farmer. 22nd April, 1848.

PROOF OF DEBT ON LOST BILL OF EXCHANGE.—PRACTICE.

A creditor claiming upon a bill of exchange accidentally lost, allowed to prove, upon undertaking to indemnify the assignees, if any other party should establish a right to prove upon the bill.

MR. HUNT, the solicitor for the assignees in the matter of *C. Farmer*, of the Edgware Road, ironmonger, called the attention of Mr. Commissioner *Fonblanque* to the claim of a creditor who had obtained the bankrupt's acceptance to

a bill of exchange long since over-due. It appeared, upon investigation, that the creditor, who resided in the country, had some time since sent up the bill to an attorney, with a view to taking legal proceedings, which were abandoned when the fiat issued. The attorney had since searched for the bill, but it could not be found, and the question was, whether, under those circumstances, the creditor being unable to produce the bill, he could be allowed to prove his debt? There appeared no reason to doubt that the bankrupt had accepted the bill in the ordinary course of trade, and that the amount was justly due to the creditor.

Mr. Commissioner *Fonblanque* inquired, if any other names appeared on the bill besides those of the drawer and acceptor?

Mr. *Hunt* replied, that the name of the creditor as drawer, and of the bankrupt as acceptor, were, he understood, the only names on the bill.

Mr. Commissioner *Fonblanque*. Then let the creditor sign an undertaking to indemnify the assignees, if any other person, as holder of the bill, shall establish a right to prove. Let such undertaking be filed with the proceedings, and the creditor may be allowed to prove.

Proof admitted.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Law of Attorneys.

[We commence the First Series of the Digest in the present volume, with the cases relating to Attorneys and Solicitors, decided in the Courts both of Law and Equity.]

AGENT.

Taxation.—*C.*, an attorney in London, employed *B.*, also an attorney in London, to defend a person indicted at Cambridge for bribery at an election there. In the year 1841 and 1842, *B.* delivered to *C.* two bills of costs, and in the year 1847, he delivered copies of the bills duly signed; *Held*, that the bills were taxable under the 6 & 7 Vict. c. 73, s. 37. *Billing v. Coppock*, 1 Exch. Rep. 14.

APPOINTMENT OF NEW ATTORNEY.

One of three defendants, against whom a decree with costs had been made, being abroad and not likely to return, and his solicitor being dead, the Court refused to order the Taxing Master to proceed with the taxation of costs upon warrants served only on the solicitor of the two other defendants; but ordered that service at the late residence of the absent defendant, where some of his family were still residing, of a subpoena to appoint a new attorney, should be good service on the defendant. And upon such subpoena having been served accordingly and no attorney appointed, the Court subsequently ordered the Master to proceed

in the party's absence. *Gibson v. Ingo*, 2 Phill. 402.

ARTICLES OF CLERKSHIP.

See *Stamp on Articles*.

AUTHORITY OF ATTORNEY.

1. *Appearance*.—*Joint-stock company*.—Where a defendant has been served with process, and an attorney without authority appears for him, the Court will not interfere to set aside the proceedings, if the attorney be solvent, but will leave the defendant to his remedy by summary application against the attorney. If the attorney be insolvent, the Court will relieve the defendant on equitable terms, if he has a defence on the merits. But, where a plaintiff, without serving a defendant, accepts the appearance of an unauthorized attorney for the defendant, the Court will set aside the judgment as irregular, with costs, and leave the plaintiff to recover those costs, and the expense to which he has been put, from the delinquent attorney by summary proceeding. *Bayley v. Buckland*, 1 Exch. Rep. 1.

Case cited in the judgment: *Hubbart v. Phillips*, 13 M. & W. 702.

2. Though the Court will, in general, where a defendant is prejudiced by the act of an attorney in acting for him without authority, leave him to his remedy against the attorney, if solvent, that rule does not apply where the defendant is in custody by reason of the un-

authorized act, or where the plaintiff or his attorney is party to the wrong. *Hambidge v. De la Crouée*, 3 C. B. 742.

BILL OF COSTS.

See *Delivery of Bill of Costs; Taxation*, 3.

CHANGING ATTORNEY.

Upon an application to change the attorney, where the client is unacquainted with the English language, the affidavits must clearly show that the purport and object of the motion are known to, and sanctioned by, the client.

It is no objection to such an application, that it is made after final judgment. *Davies, demandant, v. Lowndes, tenant*, 3 C. B. 808.

COSTS, TAXATION OF.

See *Taxation of Costs*.

DELIVERY OF BILL OF COSTS.

1. In an action on an attorney's bill against a member of the provisional committee of a railway company, it appeared that the plaintiff, who was employed as local agent and attorney, sent his bill to the residence of the solicitor of the company, who laid it on one occasion before the committee when the defendant was present, and on another occasion it was laid before the committee by the secretary, when the defendant was absent: *Held*, a sufficient delivery of the bill within 6 & 7 Vict. c. 73, s. 37. *Egginton v. Cumberledge*, 1 Exch. Rep. 271.

2. A solicitor, on payment of his costs, undertook to deliver his bill, but he neglected. On a petition presented more than 12 months after, the Court, under its general jurisdiction, ordered the delivery with costs. *In re Poljumbo*, 9 Beav. 402.

DUTY OF ATTORNEY.

Investigation of title.—Declaration alleged that plaintiff, at request of defendants, retained and employed them as attorneys, for fees, &c., to use due care in ascertaining the title of R. to lands, which were to be charged as security for payment of 600*l.* by R. to plaintiff, and to take due care that the same should be a sufficient security for the payment of the 600*l.* by R. to plaintiff; and, in consideration, &c., defendants promised plaintiff to use due care and diligence in and about ascertaining the title of R. to the lands, and to take due care that the same should be a sufficient security for such payment of the 600*l.* by R. to plaintiff.

Held, that the undertaking of the defendants as laid, did not comprehend any inquiry into the value of the lands. *Hayne v. Rhodes*, 8 Q. B. 342.

And see *Liability of Attorney*.

LIABILITY OF ATTORNEY.

1. *Fi. fa. inaccurately indorsed*.—*Trespas*.—G. recovered judgment in an action of debt against D., and employed his attorney (to whom he had previously assigned the debt in repayment of advances) to sue out execution. The attorney, who lived at Cheltenham, caused

a *fi. fa.* to be sued out, directed to the sheriff of Bucks, to levy on D.'s goods; and the attorney's London agent indorsed on the writ: "The defendant resides at Wolverton, and is an innkeeper. Levy," &c. D. was, at the time, residing with his mother-in-law, at an inn, of which she was the proprietor, at Wolverton, and was assisting her in the management, but had no interest in the premises or the goods upon them. The sheriff, in execution of the *fi. fa.*, seized goods of the mother-in-law at her inn. She brought trespass against the attorney, and obtained a verdict upon issues joined on pleas of not guilty, and denial of her property in the house and goods. On motion to enter a verdict for the defendant: *Held*, that the verdict against the attorney on the issue upon not guilty was maintainable, the facts furnishing evidence that he had directed the sheriff to levy on plaintiff's goods. *Rowles v. Senior*, 8 Q. B. 677.

2. *Settled account*.—An account settled, and a security taken by a solicitor from his client, though to be viewed with jealousy, is not to be treated as a nullity.

A solicitor and client settled an account, and the client gave a mortgage and covenant to pay. The solicitor sued on the covenant, and the client filed a bill, impeaching the transaction on the ground of surprise, undue influence, and error. This being denied by the answer, a motion for an injunction to stay proceedings on the covenant was refused. *James v. Roberts*, 9 Beav. 419.

LIEN.

1. A solicitor's lien for costs is not confined to deeds and papers, but extends to other articles delivered to him for the purpose of being exhibited to witnesses on the trial of an action. *Friswell v. King*, 15 Sim. 191.

2. *On money*.—The lien of an attorney attaches upon money received by way of compromise, though the verdict and judgment be against his client.

Upon an application to give effect to such lien, the affidavit should show the amount claimed by the attorney. *Davies, dem., v. Lowndes, ten.*, 3 C. B. 823.

SET-OFF.

Disbursements where proceeding failed by default of the attorney.—Plaintiff, an attorney, undertook a prosecution for perjury on defendant's behalf, and agreed not to charge him full costs, except money out of pocket. He disbursed 105*l.* towards carrying on the proceedings, but by negligence preferred a defective indictment, and in consequence the prosecution failed.

Held, that he could not recover against defendant for the disbursements.

Defendant, in the course of the proceedings, advanced plaintiff 100*l.* for carrying them on, and he applied it accordingly: *Held*, that in an action by plaintiff for professional charges and disbursements, defendant could not set-off the 100*l.* as money received by plaintiff to his use. *Lewis v. Samuel*, 8 Q. B. 685.

SIGNED BILL OF COSTS.

See *Taxation*, 3.

STAMP ON ARTICLES.

Under statutes 6 G. 4, c. 49, s. 4, and 55 G. 3, c. 184, sched. part 1, tit. "Articles of Clerkship," an attorney who had paid 60*l.* stamp duty on his articles in order to be admitted to the Court of Common Pleas at Lancaster, must, in order to his admission to the Courts at Westminster, pay an additional duty of 120*l.*

When an attorney, under such circumstances, had been admitted to this Court on payment of an additional 60*l.* only, the Court, on motion made within a year of such admission, but more than a year after his admission to the Court of Common Pleas at Lancaster, (see stat. 6 & 7 Vict. c. 73, ss. 29, 45.) ordered him to be struck off the roll unless he paid an additional 60*l.* in a month, though before paying the second duty he had been informed at the Stamp Office that 60*l.* was sufficient. *Myres, in re*, 8 Q. B. 515.

TAXATION OF COSTS.

1. *Retrospective operation of 5 & 6 Vict. c. 73.—Right to tax, how far controlled by special agreement.*—A bill of costs incurred prior to the passing of the 5 & 6 Vict. c. 73, held to be within its operation, though none of the business included in it was business for which, before the statute, a bill would have been taxable.

A special agreement, which covers part only of the items of a bill of costs, does not prevent the Master from proceeding with its taxation, and, consequently, such a bill may be referred for taxation without a special order.

Whether the Master is bound by such partial agreements, or whether he has jurisdiction to decide upon their validity or propriety. *Quære*.

If the agreement goes to the whole bill, its validity must be determined before the bill can be referred for taxation: for, if valid, it precludes taxation. Whether that question can be entertained upon petition, or whether it requires a bill to be filed. *Quære. In re Eyre*, 2 Phill. 367.

Case cited in the judgment: *Cooper v. Lewis*, 2 Phill. 179.

2. *Common order.—Payments.*—Under the common order for taxation of a solicitor's bill, it is the duty of the Taxing Master, for the purpose of ascertaining whether the bill has been paid, to inquire what sums have come to the hands of the solicitor applicable to such payment; and that description includes all sums received by him in his character of solicitor. *Cooper v. Ewart*, 2 Phill. 362.

3. *Unsigned bill.*—An attorney's bill may be referred for taxation under 6 & 7 Vict. c. 73, s. 37, though not signed by him, or inclosed in a letter signed by him and referring to it.

Where, by consent of parties, a verdict is taken for a sum named for damage, and also all costs to which plaintiff had been put relating to the subject-matter of the cause, as be-

tween attorney and client, without being subject to taxation, that agreement is to pay such a sum for costs as would be considered fair and reasonable on taxation in a liberal way, and not by the ordinary rule. *Young v. Walker*, 16 M. & W. 446.

4. *Payment of promissory note.*—The delivery by a client of a promissory note, held, under the circumstances, to amount to a payment of a bill of costs.

The special circumstances under which a paid bill may be taxed are such as exist or take place at the time of payment, or such as appear on the face of the bills themselves. 1st, When payment is extorted, and there are improper charges even of a smaller amount, or 2ndly, where the charges are so gross as to evidence fraud and oppression, taxation will be directed after payment.

It is imprudent for a client to pay, and for a solicitor to receive, his bill of costs so closely upon their delivery, that they cannot have been deliberately and carefully perused and examined by the client; but this alone is not sufficient to warrant a taxation after payment.

Petition for taxation dismissed, but, under the circumstances, without costs. *In re Currie*, 9 Beav. 602.

Cases cited: *In re Tryon*, 7 Beav. 496; *In re Wells*, 8 Beav. 416; *In re Bennett*, 8 Beav. 467; *In re Jones*, 8 Beav. 479; *In re Wells*, 8 Beav. 416; *In re Thompson*, 8 Beav. 237.

5. *Notice of Taxation.*—A notice of taxation of costs, dated the 23rd of February, to attend the following day, was left at the office of the plaintiff's attorney between 7 & 8 o'clock of the evening of the 24th: Held, that the notice was sufficient. *Grant v. Mackenzie*, 1 Exch. Rep. 12.

And see *Agent*.

TRUSTEE.

1. *Release by cestui que trust.*—A trustee, who was a solicitor, came to a final settlement of accounts with his *cestui que trust*, and thereupon a general release was executed. In the accounts the trustee had taken credit for bills of costs for professional services, to which, under the general rule, he was not entitled. The *cestuis que trust* were assisted on the occasion by an independent solicitor, who perused the bills and settled and attested the release. Held, under the circumstance, that the trustee was entitled to the benefit of the release. *Stanes Parker*, 9 Beav. 385.

2. *Costs out of pocket.*—On a settlement of account between a *cestui que trust* and a trustee, (a solicitor,) the latter charged for professional services in the trust. A release was executed, but the *cestui que trust* not having had any independent professional assistance on the occasion, the Court relieved him from the professional charges, beyond costs out of pocket. *Todd v. Wilson*, 9 Beav. 486.

UNDERTAKING.

See *Duty of Attorney; Liability of Attorney*.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MAY 13, 1848.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

QUALIFICATION OF MEMBERS OF PARLIAMENT.

A BILL has been prepared and brought into the House of Commons by Mr. Moffatt and Mr. Brotherton, which is described as “A Bill to enforce and render more effectual the Laws relating to the Qualification of Members to sit in the House of Commons, and to provide for the exclusion therefrom of Persons who shall be proved to be unable or unwilling to satisfy their just Debts.” We can only account for the little attention which this bill has obtained by supposing that the proposition which it embodies is not expected to find much favour in the sight of those whose assent is necessary to its becoming law, and who would be peculiarly the objects of its operation. The subject, however, is well deserving the attention of the public. If a property qualification be deemed essential to the independence and dignity of the parliamentary representatives of the people, that which the existing law has established can scarcely be considered satisfactory or efficient.

The Law relating to the Qualification of Members to serve in parliament is now, as most of our readers are aware, regulated by the stat. 1 & 2 Vict. c. 48; which provides, that no person shall be capable of being elected a member of the House of Commons, for any county, unless he shall be seised or entitled, for his own use, to an estate legal or equitable, arising out of lands or personal property, or both, of the clear yearly value of 600*l.*, for his own life or that of some other person, or for an unex-

pired term of thirteen years. And the person elected for a city or borough must have a similar estate of the clear yearly value of 300*l.*, above all incumbrances. The only persons exempted from the operation of these provisions are, the members for the universities, and the eldest sons of peers.

It is tolerably notorious that many persons borrow, or become temporarily possessed of, such a qualification as enables them to declare, as required by this act, that they believe they are duly qualified according to its intent and meaning; and that other persons, besides the members for the universities and the eldest sons of peers, find their way into the House of Commons without any adequate fortune, and continue there when surrounded with pecuniary difficulties and embarrassments. Indeed, the existing law imposes no obligation on a member becoming insolvent after his election, to retire from parliament, and resign the trust reposed in him under different circumstances, unless he happen to be a trader and is subjected to the operation of the Bankrupt Laws. Even in that event the law is not as explicit as could be desired. The 52 Geo. 3, c. 144, declares, that when a member of the House of Commons is declared bankrupt, such member shall remain for 12 calendar months incapable of sitting and voting, unless within that period the commission shall be superseded, the creditors paid in full, or security given for the debts with costs. If the commission shall not be superseded, nor the debts satisfied,

within 12 calendar months, the commissioners, or the major part of them, at the expiration of that period, are to certify the fact to the Speaker, and thereupon the election of the member is declared void. The commissioners referred to by the 52 Geo. 3, c. 144, were abolished by the 1 & 2 W. 4, c. 56, which placed the administration of the Bankrupt Laws on a different footing, and contains no express provision with respect to bankrupt members of parliament. Whether the present commissioners are authorized to certify in the same manner as the old commissioners, is a question which we are not aware has yet been determined. It is quite certain, however, that insolvent circumstances do not prevent a member of parliament from sitting and voting, and that by the invidious and inglorious privilege of freedom from arrest for debt, so jealously maintained by the members of the legislature, insolvent members of parliament are enabled to escape from the ordinary legal consequences of contracting pecuniary liabilities without any reasonable means of meeting them.

The instances are happily not numerous in which members of the British House of Commons are "unable or unwilling to satisfy their just debts," but occasionally individual cases of this nature are made known to the public, and a scandal thrown upon the representative body, which the great majority of those composing it may naturally be desirous to prevent. We apprehend that these considerations led to the preparation of the bill in question, which declares in the preamble, that "it is necessary for preserving the dignity and independence of the House of Commons, that persons who shall be proved to be unable or unwilling to pay or satisfy their just debts shall not be qualified to serve as members thereof."

To give effect to this principle the 1st section declares:—

"That from and after the passing of this act, no person who hath been, or who hereafter shall be, elected for any place within the United Kingdom shall be qualified to serve as a member of the House of Commons if he shall be proved, as hereinafter provided, to have suffered any judgment, decree, rule, order or other final proceeding, capable of being satisfied by the payment of money, and which shall have been registered or enrolled or entered of record in any Court of Law or of Equity in Great Britain or Ireland, according to the practice of such Court respectively, to remain unsatisfied or not sufficiently secured by mortgage or otherwise for and during the space of six calendar months: Provided always, That no such

judgment, decree, rule, order or other final proceeding, shall operate to the disqualification of any person to serve as a member of the House of Commons, if the same shall affect him solely as a trustee or executor, and where the estates of other parties constitute the fund for satisfaction of such debts."

The 2nd section provides for the mode in which it shall be proved that a member is unable or unwilling to pay his debts. It is the most important provision of the bill, and we copy it without abridgment. It is as follows:—

"That if at any time after the passing of this act, any member of the House of Commons shall be indebted in any sum of money upon any judgment, decree, rule or order or other final proceeding in any Court of Law or Equity within the United Kingdom of Great Britain and Ireland, which judgment, decree, rule, order or other final proceeding shall have been registered, enrolled, or entered of record, according to the practice of the several Courts respectively, for the space of six calendar months, and shall still remain unsatisfied, it shall be lawful for the creditor or other person entitled to claim and receive the money due upon such judgment, decree, rule, order or other proceeding, to make affidavit of the existence of such debt, and the consideration thereof, and that after demand duly made it still remains wholly unsatisfied and not sufficiently secured by mortgage or otherwise, and such creditor or other person shall annex thereto an examined copy of the judgment, decree, rule, order or other proceeding, with proof that the same respectively had been duly registered, enrolled or entered of record, according to the practice of the respective Courts, for and during the space of six months; and it shall be lawful for such creditor or other person so entitled to deposit or file in the office of the examiner of recognizances at the House of Commons such affidavit and exhibit, and such creditor or other person shall also serve, or cause to be served, a true copy of the same on the member who shall be said to be so indebted, or shall leave such true copy, or cause the same to be left at the last known place of abode of such member: Provided always, That the said examiner shall not permit the same to be so filed or deposited until it has been proved by affidavit to his satisfaction that such member has been duly served with such copy as aforesaid, or that such true copy has been left at the last known place of abode of such member."

By the subsequent sections it is proposed to enact, that if it appears by affidavit of the creditor that the debt remains unpaid or unsatisfied for 14 days after the deposit of the affidavit with exhibits annexed, as provided for by the 2nd section, the Examiner is to report the facts to the Speaker, and the Speaker to the House, and such report, with the affidavits, &c., shall be referred by

the House to the General Committee of Elections. The member is then to be called upon, by notice, to state whether he denies or disputes the allegations contained in the affidavits, and if he admits the allegations, or declines to make any reply to them, upon proof of service of the notice, the committee are to report the facts to the House and thereupon the member is disqualified from serving in parliament, and a new writ issues for electing another member in his room. (Sect. 5). On the other hand, if the member alleged to be indebted, deny or dispute the allegations contained in the creditors' affidavits, the General Committee of Elections are to appoint a select committee of five, who are to be sworn to try the matters of such affidavits, and who are invested with the same powers as committees for the trial of controverted elections. (Sect. 6). The select committee so appointed is finally to determine and report whether the member is disqualified or not, and may also, if they think fit, report specially, if any costs or expenses ought to be allowed to either party in such proceeding; such costs to be ascertained, taxed, and recovered according to the 7 & 8 Vict. c. 103, s. 88. (Sect. 7).

There are also clauses providing before whom affidavits used in these proceedings shall be sworn, and declaring persons giving false evidence or making false affidavits liable to the penalties of perjury.

It would be premature to enter into a critical examination of the details of this measure, until it is ascertained whether the principle of the bill meets with the amount of legislative support, which affords reasonable ground for expecting that it may become law. It is earnestly to be hoped, however, that the subject may obtain the attention to which it is justly entitled. If considered deliberately and with a becoming deference to public opinion, it seems impossible to contend that the existing law is sufficient, or that it can be maintained without modification. It may be fairly doubted whether a property qualification, which deprives the working classes of the opportunity of having their views and wishes stated in the House of Commons by persons belonging to their own order, is constitutional or expedient. Be this as it may, a property qualification which, whilst it excludes men of this class, and others of a conscientious and honourable character, is readily and constantly evaded by unscrupulous persons notoriously insolvent in circumstances, ought not much longer to be endured. The legislative bodies must deserve,

if they are to continue to obtain, the confidence and respect of the public. A man without any other income but that derived from his own exertions mental or corporeal, may be at once independent and honest, but he who is unable or unwilling to meet the pecuniary obligations he has himself incurred, is a questionable guardian of the interests of others, and can seldom either feel or act independently.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the *present* Session of Parliament, printed *verbatim* in this and the last volume of the *Legal Observer*, are as follow:—

- Extending Time for making Railways, vol. p. 204.
- Regulating the Queen's Prison, p. 558.
- North American Passengers, p. 581.
- Crown and Government Security, p. 600.
- Oaths in Chancery, vol. 36, p. 7.
- Stamp Duties Assimilation, p. 8.

TRIAL OF CONTROVERTED ELECTIONS.

11 VICT., c. 18.

An Act to remove certain Doubts as to the Law for the Trial of controverted Elections.

[5th May, 1848.]

1. 7 & 8 Vict. c. 103.—*Sitting members may, in all cases of election petitions presented before the 1st of March, object to the recognizance, on grounds omitted to be specified in recited act.*—

Whereas petitions have been presented in several cases to the House of Commons, complaining of an undue election or return of a member or members to serve in parliament: And whereas such petitions are endorsed by a certificate under the hand of the examiner of recognizances, to the effect that the recognizances required by an act passed in the 8 Vict., intituled "An Act to amend the Laws for the Trial of controverted Elections of Members to serve in parliament," have been entered into and received by him, with the affidavits thereunto annexed: And whereas in some of such cases doubts have been entertained as to the validity of the recognizances so entered into as aforesaid: And whereas in some of the cases wherein such doubts have been entertained as aforesaid other petitions have also been presented from the sitting member or members, complaining of the invalidity of the recognizances entered into in pursuance of the said recited act, and praying for relief in the premises: And whereas it is desirable that the doubts hereinbefore mentioned should be put an end to, and that a mode of proceeding

should be prescribed with respect to the determination of the several before-mentioned petitions: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That in all cases of election petitions which shall have been presented before the 1st of March in the present year, and which shall after the passing of this act be tried during the present Session of Parliament, it shall be lawful for all and every the sitting members and member against whose return any such petition shall have been presented, by themselves or himself, or their or his agents or agent, to deliver in to the clerk of the General Committee of Elections, not later than six of the clock in the afternoon on the sixth day next before the day appointed for choosing the committee to try the petition complaining of such election or return, notice in writing that a preliminary objection will be made before such select committee to the form or substance of the recognizance or recognizances entered into by or on behalf of the petitioner or petitioners against such return, provided that the ground or grounds of such objection be not such as would, under the said recited act, have entitled any sitting member petitioned against to object to the sureties or any of them who shall have entered into such recognizance or recognizances, and that the grounds of objection be stated in such notice.

2. *Select committee appointed to try election petition shall inquire first into such preliminary objection, and if the recognizance be good, proceed to try the merits of the return.—If recognizances are invalid through the neglect of the petitioners, no further proceedings to be had on the petition.—If recognizances are void, but not through the neglect of the petitioners, or if of doubtful effect, committee may amend the same, or petitioners may enter into new recognizances.*—That in all cases in which such notice of objection shall have been delivered in as aforesaid the select committee chosen to try the election petition or election petitions to which such notice relates shall in the first instance inquire into and decide upon such preliminary objection; and such select committee shall have, for the purpose of such inquiry and decision, all the powers given to select committees by the said recited act for the purpose of trying the merits of the return or election petitioned against; and if such select committee shall be of opinion that such recognizance or recognizances is or are good and valid for all the intents and purposes of the said recited act, such committee shall decide that the same is or are good, and shall thereafter proceed to try the merits of the return or election the petition relating to which shall have been referred to them; and if such committee shall be of opinion that the recognizance or recognizances is or are void, and that such invalidity is in any degree attributable to the neglect or laches of the petitioner or petitioners, or the party or parties entering into such recognizance

or recognizances, or their or any of their agents, then the committee shall report to the House accordingly, and no further proceeding shall be had upon such petition or petitions, and the order referring the same to such select committee shall be discharged; and if such select committee shall be of opinion that such recognizance or recognizances are void, as hereinbefore mentioned, but that any such invalidity as aforesaid is in no degree attributable to the neglect or laches of the petitioner or petitioners, or of the party or parties entering into such recognizance or recognizances, or their or any of their agents, or shall be of opinion that the validity of such recognizance or recognizances is doubtful, or that any party for whose security such recognizance or recognizances was or were intended might be embarrassed in enforcing the same, then the committee shall (as the case may be) decide accordingly, and in either case that such recognizance or recognizances may be amended; and thereupon, if the person or persons who shall have entered into such recognizance or recognizances, or the survivors or survivor of them, shall consent thereto, in writing signed by his or their hand or hands, the committee shall forthwith, by their chairman, amend such recognizance or recognizances, by making the same conformable to the form of recognizance contained in the schedule to the said recited act, and the chairman shall write in the margin of the same, against every amendment, the words "amended by committee," and shall sign his name to such words; or it shall be lawful for the petitioner or petitioners forthwith, before the examiner of recognizances who shall for that purpose attend the committee, to enter into a new recognizance or new recognizances, with sufficient sureties, (as required by the said recited act,) previously approved of by the committee, who shall have, for the purpose of inquiring into the sufficiency of such sureties, all the said powers given to select committees by the said recited act, and the committee shall also be satisfied that the new recognizance or recognizances is or are in due form and valid; and the committee having made such amendment, or being satisfied with such new recognizance or recognizances, shall decide that the recognizance or recognizances so amended or newly entered into is or are good, and shall proceed to try the merits of the return or election as aforesaid; but if the person or persons who shall have entered into such recognizance or recognizances shall not consent in manner aforesaid to such amendment, and if no new recognizance or recognizances shall be entered into as aforesaid, the committee shall report to the House that such recognizance or recognizances ought to be amended, or new recognizances entered into, but that the parties have not consented to such amendment or entered into new recognizances, and thereupon no further proceedings shall be had upon the petition referred to such committee, and the order referring the same to them shall be discharged.

3. *Amended or new recognizances to have the*

same effect as when originally entered into, and the decision of the committee that the same is good to be final.—That all and every recognizances and recognizance which shall be amended by any select committee shall after such amendment have, and shall be held and taken in all courts to have had, from the time when the same were or was entered into, the same force and effect for all intents and purposes whatsoever as if the same when entered into had been in the words and figures in which the same shall be when so amended as aforesaid; and the marginal words "amended by committee," written against any amendment in the same, and appearing to be signed as aforesaid, shall be evidence in all courts that such amendment was duly made, and such marginal words duly signed, under the authority of this act; and any new recognizance or recognizances which shall be entered into under the authority of this act shall have, and shall be taken to have had, from before the receiving of the petition to which the same shall relate, the same force and effect to all intents and purposes as if the same had been duly entered into under the said recited act before the receiving of such petition, and as if the examiner of recognizances had reported to the Speaker that the sureties entering into the same are unobjectionable; and the decision of every select committee that any recognizance or recognizances, or that any amended recognizance or recognizances, is or are good, shall be final and conclusive against all parties, and the validity of any such recognizance or recognizances shall not be called in question in any court upon any ground or pretence whatever.

4. That the said recited act and this act shall be read and construed together as one act.

NOTICES OF NEW BOOKS.

The Life of Lord Chancellor Hardwicke, with Selections from his Correspondence, Diaries, Speeches, and Judgments. By GEORGE HARRIS, Esq., of the Middle Temple, Barrister-at-Law. In 3 vols. London: Moxon; and Stevens & Norton.

WE have delayed a notice of these volumes on account of various subjects of immediate urgency, and must still for the present confine ourselves within narrow limits. The life of Lord Hardwicke is one of the most interesting to the profession in general. Philip Yorke affords a distinguished example of the free course which every one has an unfettered right to pursue to the highest station. His origin, however, was not so humble as that of many, for he was the son of a respectable attorney, the Town Clerk of Dover, and he was articled to an attorney in London,—Mr. Salkeld, who appears to have been one of the leading solicitors of his time, for we

find that amongst his articulated clerks were Joeelyn, afterwards Lord Chancellor of Ireland, and the founder of the title of Roden; Sir John Strange, Master of the Rolls; and Parker, Lord Chief Baron of the Exchequer.

Yorke remained with Mr. Salkeld about two years, during which he applied himself to the business of his master with great diligence, and to his studies with uncommon assiduity, making himself thoroughly acquainted with the grounds and principles of the law.

"A curious and amusing anecdote is told of his career while in his clerkship, which is certainly not uncharacteristic of Yorke. Mrs. Salkeld, who considered herself as his mistress, and who was a notable woman, thinking that she might take such liberties with a clerk with whom the writer says no premium had been received, used frequently to send him from his business on family errands, and to fetch in little necessaries from Covent Garden and other markets. This, when he became a favourite with his master, and was entrusted with his business and cash, he thought an indignity, and got rid of by a stratagem which prevented complaints or expostulation. In his accounts with his master, there frequently occurred coach-hire for roots of celery and turnips from Covent Garden, or a barrel of oysters from the fishmonger's, and other sundries for the carriage of similar dainties, indicative alike of Mrs. Salkeld's love of good cheer, and the young clerk's dexterity and spirit in freeing himself from her attempted domination. Mr. Salkeld observing this, urged on his spouse the impropriety and ill housewifery of such a practice, and thus Yorke's device for its discontinuance proved completely successful. From this circumstance, however, it may surely be rather inferred that Yorke paid a handsome premium for being articulated to Mr. Salkeld, than that he was a 'gratis' clerk; as in the former case he might consider that an unwarrantable liberty had been taken with him in requesting him to perform menial offices of this nature. In the latter event, he would have been somewhat restrained from any active resistance to the petty tyranny of Mrs. Salkeld, by which her ire might have been roused to a degree dangerous to a dependent on her husband's generosity or favour.

"Strange, who was another of Mr. Salkeld's clerks, and a contemporary of Yorke, used to carry his master's bag for him down to Westminster, and did so to the Rolls Court the very morning that Sir Joseph Jekyll took his seat there as Master of the Rolls; a ceremony which Strange witnessed. In after life, he used to mention this, and to say how little he thought at that time that he should have the option of being Sir Joseph Jekyll's immediate successor, and should actually fill the office eventually.

"There is a rough draft of a document

among Yorke's law papers, in his own handwriting, which, from the date of it, the reign of Queen Anne, must have been written by him while he was in Mr. Salkeld's office."

It appears that Mr. Salkeld thought so highly of Mr. Yorke's application, that he recommended him to enter the higher branch of the profession, and his advice was adopted in 1708, when he became a student of the Middle Temple.

Mr. Harris, after defending the practice of keeping Terms in the Inns of Court, and noticing the advantages of University distinctions, which Mr. Yorke did not possess, observes that

"It must not be assumed that the drudgery of an attorney's office is so utterly fatal to genius, so entirely 'that barren soil, wherein no verdure quickens, no salutary plant takes root,' as might from the general nature of the occupations there followed be supposed. No inconsiderable portion of the most distinguished and eminent of our judges, during the last and present centuries, so commenced their career; and some of our most successful advocates and effective debaters in parliament—among them several of the most eloquent and intellectual too—were thus ushered into the legal world. Lord Campbell mentions,^b that it is curious to observe, that the three 'greatest chancellors after the Revolution were the sons of attorneys, and that two of them had not the advantage of a university education.'

"The disadvantages to which it might be expected that any person would be mainly subject from commencing his professional career in an attorney's office, instead of studying at a university before entering at an Inn of Court, are narrowness of views, a contracted habit of mind, and a distaste for intellectual pursuits and literary accomplishments. Yorke, however, as regards his mental endowments, proved equal, if not superior, to the mass of men at the bar. Few have taken so comprehensive a view of political subjects as he did, when reasoning on a grand topic of this nature; and none have exceeded him in the ardour with which, amidst the pressure of exciting professional avocations, he still kept up the cultivation of his mind, and the pursuit of politer studies. The scientific manner in which he treated the immediate subject of his attention is also peculiarly to be observed here. But, not only have those who were thus early emancipated from this supposed thralldom, and who have so eventually been enabled to breathe the purer air of the higher walks in the profession, thus exhibited this intellectual superiority; but even those who to the end of their days have continued to exist in this asserted unhappy and degrading employment, and to hug the chain that bound them to the earth, have in several instances given proofs of the possession of minds, and intellec-

tual acquirements, of the highest order; and from this class have some of the most distinguished authors, not only of the present day, but of the last century, been produced. In these days especially, the leading attorneys at least, are gentlemen, both by education and birth; and Mr. Salkeld, with whom Yorke was placed, was in his time at the head of the profession to which he belonged."

It is interesting to observe the course of study which it is supposed was pursued in those days by Mr. Yorke.

"There is a tradition in the Hardwicke family that he read with Mr. John Brydges, of Gray's Inn; but we have no further account of that gentleman, or of the course of study he adopted. He was connected with Yorke, having married his cousin, Jane Gibbon. There can be no doubt that Yorke would have every advantage in making a proper choice of a person to direct his pursuits, from the experience, and extensive acquaintance, and influence of Mr. Salkeld; and about which the latter of course would not be indifferent, after the high opinion he had formed of his young friend's abilities, and the important step he had taken in entering him at the Temple. The real consequence, indeed, as regards the person in whose chambers Yorke became a pupil, would be not so much with respect to the particular books which he read, as the turn of mind which he gave to his pupil, the principles he inculcated, and the companions with whom he associated him. As regards the latter, he was probably influenced in an important manner by the advice of those who had preceded him at Mr. Salkeld's, whose adoption of the bar as their profession had been attended, with great success, and who were rising into practice. Their examples, which were most encouraging to Yorke, would naturally stimulate him to study and to exertion. They would often meet at Mr. Salkeld's and elsewhere; and indeed a strong friendship appears to have subsisted between Jocelyn and Yorke, and also between him and Parker and Strange, which was continued through life. Yorke would, of course, be aided in his studies by them; and his attendance at the Courts at Westminster might further serve both to improve him and to kindle the spark of ambition.

"Some information as to the mode in which Yorke pursued his early professional studies, may be gleaned from the papers and manuscripts which belonged to him at this period, and which are still in the Hardwicke collection. A great many cases and opinions were at this time copied by him, as also several judgments of the different courts, on important points. He also appears to have been very fond of collecting old law works in manuscript, as several of these are among his law papers, and which, from the date written under his name, must have been obtained during the period of his studentship."

We must defer to another opportunity

^b Lives of the Chancellors.

the further notice of these volumes, but it will be proper to state the peculiar sources of information to which Mr. Harris has had the advantage of access, and which have enabled him to introduce into his work much that was formerly unrecorded of Lord Hardwicke.

• “The sources from which the matter for these volumes has been mainly obtained are as follow : the extensive correspondence, both official and general, which was carried on throughout his career by this distinguished man with the different leading political and other illustrious personages of the day, as also with the various members of his own family ; and which is now preserved among his papers at Wimpole ; the diaries or memoranda which he was in the habit of occasionally making, in which he noted down at the time, with great care and minuteness, any particular event of importance in which he was a participator ; the diary of his eldest son, the Honourable P. Yorke, afterwards the second Earl of Hardwicke ; the manuscripts of different kinds, left by Lord Chancellor Hardwicke, including his own notes of his speeches and judgments ; the parliamentary records of the speeches he delivered ; the reports of the State Trials, in several of the most important of which he was engaged either as an advocate or in his judicial capacity, and of which his own memoranda are still extant ; and the records which have been preserved of those noblest monuments of his genius, the judgments which he pronounced during the long period that he presided as Lord Chief Justice, and Lord High Chancellor of this kingdom. To these may be added the ordinary sources of information in the newspapers, periodicals, and other publications of the day.”

Mr. Harris has also availed himself of those materials which are common to the diligent biographer.

“A selection, with much care, has also been made from Lord Hardwicke’s arguments while at the bar, and from the judgments delivered by him, both as Chief Justice and Lord Chancellor, and which have been obtained from his own notes and drafts of them, and also by reference to the published reports. Those of leading interest have been fixed upon, and, as far as possible, divested of their legal technicalities. The omission altogether from the present work of this very important portion of the matter, would be to neglect the main basis on which Lord Hardwicke’s fame is founded ; and some acquaintance with which is absolutely essential, in order to form a just and adequate notion of the qualities which adorned this great legal luminary. To throw them into an Appendix would be practically to separate them from the memoir, and to proclaim them as unfitted for the general reader. To give a mere summary of their purport would afford no real acquaintance with their nature and value. It has, therefore, been thought desirable to incor-

porate them as much as possible into the body of the work, of which they form a very indispensable and essential ingredient. They have been subjoined to the end of each chapter, according to the period of their delivery ; so that while the professional reader may continue his progress in the perusal of them, and be aided by them in his perception of the character of the subject of this memoir, the general reader, who may perhaps be repulsed by the professional aspect or apparently technical nature of these documents, may pass on when he arrives here, without the course of the narrative being interrupted.”

REPEAL OF CERTIFICATE DUTY.

THE state of public business has hitherto prevented the introduction of the Bill for the Repeal of the Certificate Duty on Attorneys, but, as we mentioned last week, notice of the motion to bring it in has been given by Lord Robert Grosvenor for Tuesday the 30th instant. This appeared by the votes and proceedings of the House of Commons on Friday in the last week.

Several further petitions have also been presented ; viz., from

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|-----------|-------------|------------|
| Alfreton | Kingsbridge | Penrith |
| Carlisle | Maryport | Pontypool |
| Crewkerne | Newport | Workington |
| Denbigh | Ormskirk & | |
| Falmouth | Southport | |

And especially from Manchester, signed by the president, vice-president, and, we believe, nearly all the members of the Manchester Law Association. This petition has been printed *in extenso* in the papers of the House. It was presented by Mr. Milner Gibson.

How, therefore, a contemporary could come to the conclusion last Saturday that the cause had been abandoned seems very extraordinary !

The following are the statements in the petition of the attorneys and solicitors practising in Manchester, being members of the Manchester Law Association :—

“That the Certificate Duty upon attorneys was originally imposed to make up an expected deficiency in a certain branch of the then revenue, and was not originally intended to be a permanent tax.

“That the annual duties now imposed upon every attorney, solicitor, and proctor are, (if the parties have been admitted three years and upwards,) 12*l.* for town, and 8*l.* for country certificates ; if admitted a shorter period, one-half of the above amount.

“That, in addition to the Certificate Duty, a Stamp Duty of 120*l.* is charged upon all articles of clerkship to an attorney, solicitor,

or proctor, and a further duty of 25l. upon his admission.

"That no other profession than that of attorneys, solicitors, and proctors, is charged with the payment of similar duties, nor is a Certificate or Stamp Duty imposed on the higher branch of the legal profession.

"That such duties are not founded on any just principle of taxation.

"That attorneys and solicitors, in common with their fellow subjects, pay their equal share of all the taxes imposed on the community at large.

"That the Certificate Duty, which falls exclusively on their branch of the profession, amounts on an average of their incomes to 4l. per cent, and therefore, if they are still required to pay the Income Tax, they ought in fairness and justice to be relieved from the Certificate Duty.

"That, owing to many recent changes and alterations in the law, the emoluments of the profession have been much diminished, although the disbursements continue very nearly the same as heretofore; and that this, in the opinion of your petitioners, is another strong ground for the remission of the tax complained of.

"The petitioners therefore pray that the Duty on Annual Certificates to practise as attorneys and solicitors may be wholly repealed, and that they may not be subjected to a different mode of taxation to their fellow subjects."

ABSENCE OF COUNSEL.

SPECIAL PAPER.—NEW RULE.

The Court of Exchequer on Monday last, the 8th instant, was compelled to rise at half-past two o'clock, in consequence of the absence of Counsel in the business of the *Special Paper*.

The *Lord Chief Baron* said,—“If counsel accept briefs for business to be done in this Court, they ought to make a point of attending whenever that business is likely to be called on. At *Nisi Prius*, a practice is rigidly adhered to, of calling on every case in its turn, and it is no ground for putting off the trial of any case that counsel engaged in it are then elsewhere. The consequence is, that the counsel either attend in person, or are represented by some other gentleman of the bar, to whom their briefs were entrusted for the occasion, and no delay arises.

“I shall now, with the concurrence of my learned brethren, lay down a general rule on this occasion, for the future guidance of the *Special Paper* business of this Court, namely, that all the cases shall be called on and disposed of without reference to the convenience of counsel. It is not to be tolerated, that the Court should be obliged to adjourn at this early hour of the day, in consequence of the absence of counsel.”

MR. WARREN'S LECTURES AT THE INCORPORATED LAW SOCIETY.

THESE Lectures will be delivered in the Hall of the Society, in Trinity Term next, viz., on Monday 29th *May*, Friday 2nd, Monday 5th, and Friday 9th *June*, at eight o'clock precisely.

The following is extracted from the prospectus:—

In these Lectures, it is intended to take a comprehensive practical view of the moral, social, and professional duties of attorneys and solicitors.

It is of great importance to society to secure adequate moral and intellectual qualification and efficiency in a body of men whose services are indispensable to all classes, from the highest to the lowest—who are linked with them in the most delicate, critical, and intimate relations, affecting, according to circumstances, the life, character, honour, liberty, or property of each member of the community.

It is feared that this great department of the profession is too often entered, and occupied, without adequate reflection upon the arduous responsibilities which it entails on its members, and upon their fitness to sustain them.

These topics it will be endeavoured to enforce and illustrate by appeals to professional experience, and the ordinary course of the events and transactions of society.

Members of the society are entitled to attend the lectures; and the subscribers to the lectures on Equity, Common Law, or Conveyancing will be admitted gratuitously, upon the production of a ticket, which may be obtained of the secretary.

RESULT OF THE EASTER TERM EXAMINATION.

It appears that 112 candidates were entitled to be examined on the 2nd *May*; that 110 attended, but one of them withdrew during the day,—leaving 109 who brought up their answers to the questions in due time. The Examiners were,—Master Walker, Mr. Kinderley, Mr. Lavie, Mr. Lumley, and Mr. Wing. After sitting till 6 o'clock, they adjourned till the next morning and ultimately passed 102 of the candidates, and postponed the remaining 7.

TRINITY TERM EXAMINATION.

THE Examiners have fixed *Tuesday* the 6th *June* to take the Examination of the Candidates for admission on the Roll in Trinity Term.

The Testimonials of service of Clerkship must be left at the Office of the Incorporated Law Society, on or before *Thursday* the 1st *June*. That is the last day; but it is desirable to leave them previously, in order that the Secretary may point out any defects or omissions in time, if practicable, to have them supplied before the Examiners meet.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1848.

Queen's Bench.

| <i>Clerks' Names and Residence.</i> | <i>To whom Articled, Assigned, &c.</i> |
|---|---|
| Ambler, James Pearson, Amwell-street, Clerkenwell and Halifax | Harrison Robson, Halifax |
| Anderson, Robert, 17, Park-road, St. Marylebone | A. F. Chamberlayne, Great James-street |
| Allin, Thomas Charles, 6, Park Hill Villas, Clapham | Henry B. Wedlake, King's-bench-walk |
| Brookes, George, Whitechurch; and Leeds | W. W. Brooks, Whitechurch John Atkinson, Leeds |
| Brown, Washington Hamilton, 54, George-street, Euston-square | F. Barnes, Winchester |
| Bonsell, Isaac, Machynlleth | J. G. W. Bonsall, Machynlleth |
| Bartlett, C. Leftwich Oldfield, 25, Prince's-street, Upper Stamford-street, Lambeth; Charminster; and Sutton Montis | Joseph Stone, Dorchester |
| Brodribb, Dudden, jun., 2, Regent's-place, West; and West-square, Lambeth | John Rutter, Shaftesbury |
| Beedham, Braylesford II., 1, Howard-street, Strand; and Kimbolton | G. Archer, Ely J. Beedham, Kimbolton |
| Baines, George, Halifax | E. N. Alexander, Halifax |
| Burder, John, jun., 27, Parliament-street | William G. Bolton, Austin Friars |
| Bridger, Edward Kynaston, 60, Torrington-square; Winchester; and Finsbury-circus | Edward Bridger, London-wall Charles Bridger, Winchester] |
| Boulton, George, 6, Oxford-terrace, Upper Holloway | W. J. Boulton, Northampton-square |
| Brindley, Joseph Pargeter, 5, South-parade, Trafalgar-square, Brompton; and Birmingham | H. M. Griffiths, Birmingham |
| Bye, William, Soham | Thomas Hustwick, Soham |
| Berry, John Johnson, 75, Oxford-terrace, Hyde park; and Newcastle-under-Lyme | J. W. Ward, Newcastle-under-Lyme |
| Bury, John, 2, Lyndhurst-square, Camberwell | J. Lawrence, St. Ives |
| Bulleid, John G. Lawrence, 25, White-lion-street, Islington; and Glastonbury | S. Holman, Glastonbury |
| Boothroyd, Edward Hyde, 26, Edmund-place, Aldersgate-street; Stockport; Shaw Heath House; and Essex-street, Strand | John Boothroyd, Stockport |
| Barwell, Charles Dawson, Bethlem-hospital; and Northampton | C. Britten, Northampton |
| Bassett, Robert Goodenough, 18, Upper Barnsbury-street, Islington; and Romsey | C. J. Tylee, Romsey |
| Broadhurst, Alfred, 45, Stanhope-street, Park-place, Camden Town | Charles Pearson, Belmont, Kent |
| Bell, John William, 8, Symond's-inn; Gillingham; Yeovil; and Albert-terrace | J. Slade, Yeovil W. R. Bell, Gillingham |
| Bourne, James Samuel, 3, Wells-street, Gray's-inn-road; and Dudley | Joseph Green Bourne, Dudley |
| Cunnington, Augustus, Braintree | John Cunnington, Braintree A. C. Veley, Braintree |
| Cartwright, Augustus Frederick, Spalding | William H. Tatam, Spalding C. Harvey, Spalding |
| Collins, Eli Earl, 7, Eldon-place, Upper Grange-road, Bermondsey; Clarence-street | Charles Blake, London-wall |
| Cunliffe, Henry, 28, Tavistock-place; and Preston | J. Walker, Preston J. Cunliffe, Preston |
| Christian, John, 2, Bury-place, Bloomsbury-square; Whitehaven; and Southampton-builds. | Henry Perry, Whitehaven |
| Crossland, Robert, Bury | J. Winder, Bolton-le-Moors |
| Codd, Charles Robinson, 12, Wharton-street, Clerkenwell; and Scarborough | J. Cook, Scarborough |
| Cammack, Alfred, 2, Spencer-villas, Islington; Kingston-upon-Hull; and Featherstone-builds. | P. Wells, jun., Kingston-upon-Hull |
| Cowdell, Alfred Barton, 22, Tonbridge-place | William Cowdell, sen., Hinckley Robert Few, Henrietta-street |
| Churchill, Henry, Deddington | Samuel Field, Deddington |
| Cutler, William Henry, 11, Pratt-street, Camden-town | Frederick Cutler, Furnival's-inn |
| Collins, John, Newton-road, Baywater | James Bowen May, Queen's-square, Bloomsbury |
| *Compton, Charles Henry, 4, Alfred-place, Camberwell-new-road | Edward Frederick Leeks, 13, St. Swithin's-lane |

- Davies, Reginald Stevenson, 18, Savile-row, Burlington-gardens Henry Whittaker, Boulogne
 Drummond, Nelson, Cockermouth J. Tatham, New-square, Lincoln's-inn
 Durant, John Frederick, 40, Baker-street, Lloyd-square; Upper North-street; and Poole Robert Benson, Cockermouth
 Dicken, Roger Spencer, jun., 31, Great Marlborough-street J. Durant, Poole
 Durant, Thomas, jun., 7, Pembroke-terrace, Caledonian-road; and Sherborne William Owen, Wem
 Dineley, Frederick, 30, Bloomsbury-square B. Chandler, jun., Sherborne
 *Dale, Henry, jun., 53, Great Coram-street, Russell-square R. Gamlen, Gray's-inn-square
 Estlin, Alfred Laird, 17, Upper Calthorpe-street J. Clift, Bloomsbury-square
 Eagles, Ezra, jun., 72, Judd-street; and Bedford Henry Dale, North Shields, Northumberland
 Eaton, Thomas, 11, Gray's-inn-square; Lyon's Inn A. Estlin, Somerton
 Etherington, Charles, 2, Church-court, Clements-lane John Lawford, Drapers'-hall
 Eltoft, Joseph, Chorlton-on-Medlock; and Manchester E. Eagles, Bedford
 Edwards, Robert, 14, Chester-terrace; and Hanstycottage, near Ruthin Edward Smith, King's-arms-yard
 Francis, William, Albert-street, Mornington-crescent; and Tranmere B. Field, Lincoln's-inn-fields
 Faithfull, Frederick Dundas, 32, Elizabeth-street, Eaton-square; Great Russell-street, New-man's-row; and New Millman-street C. R. Randall, Tokerhouse-yard
 Foyster, William, Glamford Briggs W. A. Coombe, Gravesend
 Frost, John, 9, Colet-place, Commercial-road W. C. Chew, Manchester
 Friend, William Henry, 6, Store-street, Bedford-row; Canterbury; Ampton-street; and Parkenham-street E. Jones, Brynstryfyd; and Chester-terrace
 Freame, Robert Sadler, 8, Symond's-inn; Corsham; and Albert-terrace Thomas Dodge, Liverpool
 Fellows, Harvey Winson, Rickmansworth J. Francis, Liverpool
 Fryer, William Henry, 16, Harper-street, Trinity-square H. Almond, Liverpool
 Gross, Woolnough, 3, Cambridge-terrace, Islington; 36, Sidmouth-street, Regent's-square G. P. Nicholson, Wath-upon-Dearne
 Greville, Fden Kaye, 21, Wakefield-street, Regent's-square; George-square, Edinburgh D. S. Bockett, 60, Lincoln's-inn-fields
 Goodall, Frederick Bates, 14, Cardington-street, Nottingham, and Arundel-street Thomas Freer, Brigg
 Grundy, George Openshaw, Bury B. Bodman, Budge-row
 Gill, Frank Selby, 15, Devereux-court, Temple; and Tillotson-place, Waterloo-bridge G. Curteis, Canterbury
 Godfrey, John, Liverpool H. C. Kingsford, Canterbury
 Garbutt, Thomas, 32, Granville-square, Pentonville J. T. Vining, Yeovil
 Garland, Trevor Lorange, 33, Hyde-park-square Thomas Fellows, Rickmansworth
 Greaves, Thomas, Kingston-upon-Hull J. E. Moulden, Southwark
 Hoskins, Thomas, jun., Carpenter's-buildings, London Wall; and Gosport G. M. Phillips, Laurence Pountney-lane
 Harrison, Edwin Albert, Trafalgar-terrace, De Beauvoir-square; 7, and 18, Blenheim-terrace T. French, Eye
 Halton, Charles, Whitehaven; and Carlisle H. T. Raven, Harcourt-buildings
 Hill, Walter, Leamington Priors John Smith, Nottingham
 Howard, Frederick William, Doncaster R. T. Grundy, Bury
 Harris, James Charles, Warwick W. Scrivens, Hastings
 Harwood, Edward Morcom, 18, Baker-street, Pentonville J. P. Phillips, Swithin's-lane
 Harvard, Arthur, 13, Park-terrace, Islington; and Wirksworth J. Stiles, Shepton Mallett
 J. B. Cracknell, Poulton
 E. Govett, Upper North-place
 P. F. Curry, Liverpool
 W. Garbutt, Yarm
 W. E. Winter, Bedford-row
 J. A. Jackson, Kingston-upon-Hull
 D. Howard, Portsea
 A. Harrison, Birmingham
 W. Nanson, Carlisle
 J. Musgrave, Whitehaven
 R. Poole, Southam
 John Howard, Liverpool
 Robert Baxter, Doncaster
 Thomas Heath, Warwick
 F. Short, Bristol
 J. C. Newbold, Matlock

Those marked thus (*) are Common Pleas admissions; the rest are in the Queen's Bench.

[This List will be continued in our next Number.]

NOTES OF THE WEEK.

MEETING OF THE BAR.—PARLIAMENTARY FEES.

THE ATTORNEY-GENERAL has called a general meeting of the Bar, for this day, (Saturday;) in the Old Hall of Lincoln's Inn, at half-past three o'clock. The object of the proposed gathering is said to be, to make some regula-

tions concerning the non-payment of Counsels' Fees by Parliamentary Agents. We shall have some remarks to make in our next number in respect to this subject.

CHANCERY VACATION.

The Lord Chancellor has intimated that he will not sit from the day when the Term concludes, until the 1st day of Trinity Term. —

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Blenkinsopp v. Blenkinsopp. March 8, 1848.

PRODUCTION OF PAPERS.—SOLICITOR.

F., a solicitor, by his answer claimed the right of refusing to produce certain documents, on the ground of their having come into his possession as solicitor for B., who denied by his answer that F. had ever acted as his solicitor. The plaintiff amended his bill, stating the claim set up by F., but did not require B., who was out of the jurisdiction, to answer the amendments.

THIS was a renewal of a motion, made sometime since, for the production of certain papers by a Mr. Fenwick, one of the defendants, who refused to produce them upon the ground that they had come into his possession as the solicitor of Mr. Blenkinsopp, and that they were therefore protected. Mr. Blenkinsopp, by his answer, had denied that Mr. Fenwick had ever acted as his solicitor, or that he had any papers in his possession, or in that of Mr. Fenwick as his solicitor; and, on the former motion, an attempt was made, by means of an affidavit, to bring this inconsistency to the notice of the Court. Mr. Blenkinsopp, however, was not before the Court on that occasion. The plaintiffs had now amended their bill by inserting charges expressly bringing forward the difference between Mr. Blenkinsopp's statement and that of Mr. Fenwick, and had served Mr. Blenkinsopp with notice of these amendments and of the present motion. But they had not required him to put in any answer, which indeed they could not have enforced, because he was resident in Scotland, and he had allowed the time limited for answering to expire without having answered.

Mr. Fenwick, by his further answer, stated that he believed Mr. Blenkinsopp did insist upon his privilege.

Mr. Turner and Mr. Glasse, for the motion, contended that Mr. Blenkinsopp, not having put in any further answer, must be taken to have admitted that the statement in the amended bill, as to Mr. Fenwick not being his solicitor, was the true one, and therefore, that Mr. Fenwick had no right to set up the claim of protection as Mr. Blenkinsopp's solicitor. For the protection was the protection of the client, and not of the solicitor, and Mr. Blen-

kinsopp had disclaimed that relation which constituted the foundation of the right. They referred to *Green v. Pledger*, 3 Hare, 165.

Lord Langdale, without calling upon the counsel on the other side, said that he did not see how he could so shape the case as to bring it within the rules which had been established in respect to the production of documents. Perhaps the Lord Chancellor might be able to overcome the difficulty. Here were solicitors swearing by their answer, to an effect which entitled them to protection, and Mr. Blenkinsopp, to whom they claimed to be solicitors, denying that they were his solicitors. One might much wish that these gentlemen might not be bound to withhold papers under such circumstances. But he questioned whether Mr. Blenkinsopp's answer could be read against the solicitors. He had several times inquired whether this state of circumstances had been brought to Mr. Blenkinsopp's notice, but found that he had not been required to answer. Mr. Blenkinsopp might have the means of explaining the present incongruity, and he thought that, under these circumstances, he could not order the production of these papers.

Mr. Roupell then asked for Mr. Blenkinsopp's costs, but

Lord Langdale said, that if Mr. Blenkinsopp appeared and did not interpose, he should order the production of the papers.

Vice-Chancellor of England.

Ex parte Whittaker Bush. April 28, 1848.

ALTERATION IN TITLE OF PETITION.—AFFIDAVITS.

After a petition had been presented and affidavits sworn in support of it, an addition was made to the title of the petition by the Secretary of the Lord Chancellor; on the petition coming on for hearing, such addition to the title ordered to be omitted to prevent the necessity of having the affidavits re-sworn.

In this case a petition had been settled and affidavits in support of it sworn with the title "*Ex parte Whittaker Bush, in the matter of the Wilts, Somerset, and Weymouth Railway Act, and in the matter of the Lands Clauses Consolidation Act.*" When the petition was

presented, the Secretary of the Lord Chancellor added to the title the words "In the matter of John Whittaker's estate." The petition now came on before his Honour.

Mr. Saunders appeared upon it, and suggested that as the title at present stood the affidavits would not be allowed to be used in the Registrar's office, and it would be necessary to have them re-sworn, which would cause great delay and expense, as they were eight in number and the parties resided at a distance. The alteration in the title of the petition had been made after the affidavits had been sworn.

The Vice-Chancellor ordered that the title of the petition should be restored to its original state by the omission of the words "In the matter of John Whittaker's estate."

Vice-Chancellor Knight Bruce.

Sibson v. Edgworth. Jan. 22 and 24, 1848.

SIGNATURE OF SUBSCRIBERS' AGREEMENT.—PLEA.

A plea was put in by a defendant to a bill by a shareholder on behalf of himself and all others, to wind up the affairs and divide the assets of the company, averring that some of the parties on whose behalf the bill had been filed had not signed the subscribers' agreement, and had not an interest in common with the plaintiff and others who had. The Court ordered the plea to be overruled, reserving the benefit of it to the hearing.

THE plaintiff, M. Sibson, filed the bill on behalf of himself and all other the shareholders in the Wrexham, Montreal, and Crewe Junction railway, except the defendants, praying that the assets and property of the company might be duly applied towards payment of its debts and liabilities, and the surplus divided among the shareholders rateably. The plaintiff and a great number of shareholders had signed the subscribers' agreement, but others had not. The defendants put in a plea to the bill setting forth the subscribers' agreement, dated 5th of December, 1845, by which it was agreed that the capital should be 450,000*l.* in 22,000 shares of 20*l.* each, and that a deposit should be paid of 2*l.* 2*s.* 6*d.* per share; that application should be made to parliament by the provisional directors thereby appointed for the act; and that the directors should employ all surveyors, clerks, servants, solicitors, &c., at their discretion; and that, whether the act should be procured or not, the directors should be indemnified against all acts whatever done by them in pursuance of the powers thereby given to them, and against all losses, costs, charges, and expenses incurred by them in the execution of the trusts and powers thereby confided to them to be apportioned and made good among the subscribers rateably. The plea averred that Tubal Cain, Jones, and twelve others had not subscribed the above document, and had applied to have shares, which were granted or allotted to them, and that they had

no interest in common with those who had so subscribed.

Mr. Bacon and Mr. Freeling for the plea, said, that the plaintiff had not an interest in common with some of the shareholders as had not signed the subscribers' agreement, for which he was bound to allow the defendants—the directors to deduct all expenses from the money in their hands, they, the subscribers who had not signed, were entitled to have the whole of their money back without any deduction whatever. That the plaintiff had no right to bind such parties to give up any of their remedies or any part of their subscription monies as the scheme had failed. They cited *Richardson v. Iarpent*, 2 Y. & C. C. C. 507; *Laud v. Blanshard*, 4 Hare, 9; *Nockells v. Crosby*, 3 B. & C. 814; *Pitchford v. Davis*, 5 Mees. & W. 2; *Walstabb v. Spottiswoode*, 15 Mees. & W. 501; *Garwood v. Ede*, 11 Jur. 912; *Doyle v. Muntz*, 5 Hare, 309; and *Richardson v. Hastings*, 7 Beav.

Mr. Russell and Mr. Anstey for the plaintiff, cited *Clement v. Todd*, Law Jour., N. S. vol. 17 and 31, Exch., where the whole Court decided that a party who applies for shares in a company, the letter of allotment of whose shares makes it a stipulation that the allottee shall execute the parliamentary contract and subscribers' agreement, is in the same situation, if he accepts the allotment, as if he had executed those documents. So here the form of application for shares had at the close of it the following words:—"And I hereby undertake to execute the subscribers' agreement and the parliamentary contract, when required; and the letter of allotment was concluded thus:—"The shares with the deposits paid thereon will be liable to forfeiture without notice in respect of which the subscribers' agreement and parliamentary contract are not signed within the specified time.

His Honour said, that it seemed to him that all the shares which had been allotted were allotted in this form. He thought it better to overrule the plea saving the benefit of it to the hearing of the cause.

Queen's Bench.

(Before the Four Judges.)

The Queen v. Cork. Easter Term, 1848.

CHURCHWARDENS.

There may be in a parish a usage for the parishioners to elect both the churchwardens, and where that usage has long existed, the appointment, in one year, by the clergyman, of a churchwarden, who is sworn in but does not act, will not defeat the usage.

Mr. Crowder moved for a rule to show cause why the verdict which had been entered in this case for the Crown should not be set aside and a verdict entered for the defendant. This was a mandamus to the defendant, directing him to swear in two churchwardens for the parish

of Woodbury, in the county of Devon. These churchwardens had been elected to office by the parishioners, and on the return the issue raised was, whether there was a good custom in this parish for the inhabitants to choose both the churchwardens. The cause was tried before Mr. Justice Wightman, at the last assizes at Exeter, and the question then was, whether the parol evidence given to support the alleged custom was sufficient to establish it. He submitted that that evidence was not sufficient, the custom set up being one in derogation of the Canon Law, the provisions of which had been recognized and adopted by the Common Law. The only evidence given to support the alleged custom was that of usage for a very long time back. But this usage was not uninterrupted, for in the year 1810 there was an election of churchwardens, and the parishioners elected two persons, but the minister interfered and set aside one of them named Whipple, and put one Benjamin Butler in his place, and Butler was on this appointment sworn into office. The right supposed to be derived from usage was therefore at an end. The case of *Hubbard v. Penrice*^a is directly in point. There, upon a mandamus, this question was expressly raised, and the Lord Chief Justice held that it lay on those who asserted this custom to prove its existence, and that they failed in doing so, it appearing that though the parson had generally left it to the parishioners, yet he had sometimes interfered. The same principle was adopted in *Slocombe v. St. John*.^b [Mr. Justice Wightman. But the evidence showed that though Butler was sworn in he did not act.] Still the swearing in was a sufficient interruption of the alleged custom to prevent it being treated as proof of the right being in the parishioners.

The Court was of opinion that this rule must be refused. The mere presumption of law was not in this case sufficient against a well-established usage. The usage here did appear to be well established. The single instance of interruption relied on for the defendant rather strengthened the usage than weakened it; for it showed that though the clergyman's churchwarden had been sworn in he had not ventured to act. Why he did not act was not proved, but the fact was, that while he abstained from acting the churchwarden nominated by the inhabitants did act. The usage was established, and there was nothing to affect it.

Rule refused.

Queen's Bench Practice Court.

Jones v. Jones. April 29, 1848.

(Before Mr. Justice Coleridge.)

COUNTY COURT.—JUDGES' POWER.—PROHIBITION.

The judge of a County Court gave judgment in favour of a defendant, on a plea of the

Str. 1246.

^a Rogers's Ecclesiastical Law, citing Steer's Parish Law.

Statute of Limitations, which was recorded in the register book, after which the Court rose. Some days after this, the defendant received notice, that the judge had recorded his decision, and that the cause was again adjourned to the next court-day, at which the defendant attended, and protested against the revision of the judgment in his favour; the judge however proceeded to give judgment for the plaintiff with costs, on the ground that the Statute of Limitation had been pleaded without the notice required by the 19th rule framed by the Judges' Order, the 78th section of the act, (which objection had not been taken at the hearing of the cause), and therefore was improperly pleaded.

Held, that a prohibition ought to issue to the County Court to prohibit the judge or the plaintiff from proceeding any further with the writ, on the ground of want of jurisdiction of the judge.

Semhle, that the judge might have recorded his decision if done at the same court, with notice to the parties.

THIS was a rule calling on the plaintiff and also the judge of the County Court of Merionethshire, to show cause why a writ of prohibition should not issue, directed to the said judge and his officers, to prevent them from issuing execution or proceeding any farther in the cause. It appeared by the affidavits on which the rule was moved, that the plaintiff in this case was entered for 1*l.*, 10*s.* being for debt on a promissory note, and 6*s.* for interest thereon. The promissory note was dated on the 18th of Feb. 1837, the summons was returnable on the 23rd of July, 1847, on which day the parties appeared, and the defendant applied for better particulars and for a copy of the rule, stating, that he intended to rely on the Statute of Limitations in answer to the claim; his application was granted by the judge, and the case adjourned until the next court-day, which was on the 11th of August; on that day the parties came again before the Court, when it was again adjourned until the 9th of September, to enable the plaintiff to offer some evidence, so as to take the case out of the operation of the Statute of Limitations. This he failed to do, and at that Court the defendant had judgment in his favour, on the plea of the Statute of Limitations, and the judge also decided, that the costs were to be paid equally by both parties. Shortly after this the defendant received notice that the cause was again adjourned, and would be further heard on the 13th of October, when the next court would be held. The defendant attended on that day, and protested on the case being again gone into, as it had been decided and judgment recorded in his favour at the last court. The judge, however, then proceeded to give judgment in favour of the plaintiff for both debt and costs, stating that he had rescinded his former decision. The ground on which he gave judgment for the plaintiff was, that the

plea of the Statute of Limitations had been improperly pleaded by the defendant; the 19th rule of practice framed by the Judges' Order, the 78th section of the County Courts Act, (9 & 10 Vict. c. 95,) requires, that "where a defendant intends to rely on the special defence of infancy, coverture, the Statute of Limitations, &c., he must give notice in writing thereof to the clerk of the Court five clear days before the day on which the summons is returnable; provided always, that where such notice shall not have been given, the judge in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause to enable the defendant to give such notice." &c. Now in this case, no notice whatever had been given, or leave asked to adjourn the Court for that purpose. The present rule having been obtained,

F. Bailey now showed cause, and contended, that the judge was quite right in rescinding his decision, as the plea pleaded without notice was clearly a nullity. [*Coleridge, J.* But what do you say to the judge having rescinded his judgment in the absence of the parties?] *Bailey, 1st.* This is not a perfect judgment by the judge, but a mere decision or an expression of an opinion which may be altered. We have a verified copy of the record or register-book which contains this copy of what took place on the 9th of September. "Adjourned from last Court, (No. 65.) Stat. Limits., verdict for defendants, costs to be divided;" then a little lower down, "No. 65, same Court. The above decision rescinded, and case adjourned to next court." [*Coleridge, J.* You can scarcely contend there was not a judgment on the 9th of September, for there is a decision made and noticed in the proper book, and the parties went away.] *Bailey.* Then 2ndly, The judge had a perfect right to record his judgment, for the Court had been imposed on by the Statute of Limitations being pleaded without the proper notice having been given; no objection was taken at the hearing, for the point seems to have escaped the judge and also the plaintiff. This being so, the judge finds out the mistake, and records his decision at the same Court, as appears by the entry; this he had a perfect right to do: the question is analogous to a decision in the Superior Courts, and it is submitted, that the judges sitting in Banco have a perfect right to amend their judgment during the term, which is but one day in law; here the sitting of the County Court judge is, like a term. In *Rex v. Carlisle*, 2 B. & Ad. 973. *Parke, B.*, says, that during the term the judgment is still in the breast of the Court; he also cited *Chambers v. Moore*, 3 Leving. 430; *Keen v. The Queen* (in error), 3 New Sess. Cass. 28, Bacon Ab. Title "Court of Sessions."

Mr. Lloyd, who appeared to support the rule, was directed by *Mr. Justice Coleridge* to confine his observations to the question of jurisdiction.

Lloyd. It is clear that the judge acted without jurisdiction in this case, for here there was a judgment entered for the defendant on the

record of the Court, and when once judgment had been given by the judge, he was *functus officio*,—here too it was done behind the back of the parties, and at what time it is not known; we know it was not done at the Court holden on the 9th of September, and that we believe it was not done on that day: this is not answered by the other side. Here, too, the entry is of a "verdict." This would imply the introduction of a jury. It is not clear whether there was a jury in this case; if there was, their verdict could not be altered after it was recorded. 2 Co. Litt. 277; but if there was no jury, still the judge in a County Court acts as judge and jury, and it can never be permitted that a judge is thus to alter his decision behind the back of parties after the Court has risen, and perhaps many days after the judgment recorded.

Coleridge, J. I am of opinion this rule should be made absolute, not on the ground of an improper exercise of discretion by the judge, because on that I should have no right to interfere, but on the ground that he has exceeded his jurisdiction, which he certainly has done, by what took place after the 9th September, unless, indeed, it can be considered that what took place before then was entirely null and void. Now, although it might have been irregular to have pleaded the Statute of Limitations without a previous notice, yet the plaintiff was aware, long before the court holden on the 9th September, at which the judgment was given, that the defendants intended to plead that plea; for it appears the defendants came to the court held on the 23rd of July with that plea; so that two courts besides that at which that plea of the Statute of Limitations was pleaded, that is to say, on the 11th of August and 9th of September respectively, passed, but no objection was made to it, and indeed time was given to the plaintiff to enable him to answer it on the 11th of August, and thence until the 9th of September, and being at that time unable to do so, judgment was given for the defendants. It is not now material to inquire whether or not the case was heard by a jury; but if it was heard, it is clear that the judge had no power to alter the verdict; and if heard by the judge alone, it appears that he made his decision in favour of the defendant, and it was entered in the book kept for that purpose in that way; it was therefore complete in his favour on that day. I do not mean to say but that a judge might alter his judgment on the same day, during the sitting of the court, but he can have no authority to alter it in his own chambers, and behind the back of the parties after the court was broken up. The defendants, who had gone away as soon as they heard judgment pronounced in their favour, cannot, of course, speak to everything that transpires in their absence; but the clerk to the defendants' attorney does say that he believes, and the defendants also believe, that the judgment given for them, and recorded on the 9th of September, was never altered or rescinded at any time on that day, and that, if it had ever been altered at all, it must have been after the

court had risen and on a subsequent day. Surely this calls upon the other side to say whether or not in fact the judgment was so altered on the same day. They had no notice of this statement in the affidavit produced on the part of the defendants, and might have produced an affidavit in contradiction had this not been so; but, instead of this, they merely produce a verified copy of the entry of the judgment and its being rescinded on that day, as entered in the book, which appears to be rather an evasion of the facts. I think, therefore, that there has been an excess of jurisdiction, and that the rule for a prohibition should be made absolute.

Lloyd applied for costs.

Coleridge, J. No, not with costs. This is the mistake of the judge.

Rule absolute without costs.

Common Pleas.

Ex parte Stevens. Easter Term, 1848.

ACKNOWLEDGMENT TAKEN ABROAD.—AFFIDAVIT SWORN BEFORE COMMISSIONER.

Where the affidavit of an acknowledgment taken under the 3 & 4 W. 4, c. 74, purported to have been sworn "before a Commissioner of the Supreme Court of New South Wales at Sidney, duly authorized to take oaths at Sidney aforesaid," the Court refused to order it and the notarial certificate verifying it to be filed.

Semble, also, that it was a good objection that the affidavit was entitled "In the Supreme Court of New South Wales."

Prentice moved in this case that the proper officer of the Court be directed to receive and file the acknowledgment, with the affidavit and notarial certificate verifying the same, which had been made under the provisions of the 3 & 4 W. 4, c. 74, at Sidney, in New South Wales. The affidavit was entitled "In the Supreme Court of New South Wales," and appeared by the jurat and the notarial certificate to have been sworn before "a Commissioner of the Supreme Court of New South Wales at Sidney, duly authorized to take oaths at Sidney aforesaid;" and on that account the officer of the Court had declined to receive and file the documents, on the authority of the case *In re Street*, 2 Com. B. 364. As to any objection to the title, it was submitted that, provided the affidavit appeared to have been sworn before an officer empowered to take affidavits, it need not be entitled in the court in which it was used, and for that the case of *White v. Irving*, 5 Dowl. 289, was an authority.

[*Wilde*, C. J. There the affidavit was entitled in no court, but here it is very different, being entitled in a court abroad.]

Then, as to the other objection, it was enough if the affidavit appeared to have been sworn before a person having jurisdiction to take oaths generally at the particular place where it was sworn, and that did substantially appear

in the present case. *In re Pickersgill*, 6 Man. & Gr. 250; *Davy v. Maltwood*, 2 Man. & Gr. 424.

Per Curiam. The rule, in cases like this, must be adhered to, unless some special circumstances were shown as a reason for departing from it. Here, taking the statements in the jurat and notarial certificate together, the affidavit appeared to be sworn before a person empowered to take oaths in proceedings in the Supreme Court of New South Wales, and in those only, and it was not shown that any difficulty existed in having the oath administered by the proper officer; the application therefore cannot be granted.

Application refused.

Court of Exchequer.

Nix v. Phillips and others. Jan. 19 & 22, 1848.

TAXING COSTS AFTER BOND GIVEN FOR THE AMOUNT.—FRAUDULENT CHARGES.—POSTPONING TRIAL.

Where an attorney proceeds to trial upon a bond of nearly two years standing, given for costs in a previous action which have not been taxed, the Court will not, upon application made on behalf of the defendant, and upon affidavit of improper charges, postpone the trial until the bill shall have been taxed; but will prevent the attorney from entering up judgment until after taxation, or for more than the taxed amount.

The Court will also, under such circumstances, order the Master to report whether the bill contains any fraudulent charges, and also any other special matter, and make the costs of taxation dependent upon such report.

In this case a judgment by default had been obtained in the year 1845, by Mr. Kitchen, an attorney, against the defendants, who are brothers, and also against their sisters. The defendants did not employ a solicitor in that suit. Mr. Kitchen died, and Nix, (the plaintiff,) who had previously been his clerk, was appointed his executor, and subsequently took his business. In 1846, application was made to the defendants, and to their sisters, for the costs of suit, stated at the sum of 850*l.*; and an arrangement was made with the defendants, (who are the brothers, the sisters refusing,) in conformity with which, in April, 1846, they gave their bond, in which they covenanted to pay the said sum of 850*l.*, the amount claimed. The present action having been brought upon this bond, the defendants applied to Mr. Baron Rolfe at chambers, to have a bill of costs delivered in order that the same might be taxed, and that proceedings in the meantime might be stayed. An order was obtained for a delivery of the bill of costs, but without a stay of

* A magistrate of the place. See the rule in 2 Man. & Gr. 424.

proceedings. The defendants had omitted to plead that no bill had been delivered according to the statute. Notice of trial was given for the second sittings in this Term, (Jan. 19,) and the bill was delivered in the evening of the 17th.

Whateley, for the defendant, applied to have the trial postponed until the bill was taxed. There had been no delay on the part of the defendants, and until the order had been complied with for the delivery of the bill, no order for taxation could be had, because it could not be known whether it contained any taxable items. He then stated, from affidavits, that 14*l.* 14*s.* were charged in the bill for making out the title of the next of kin to one Smith, which amount had been paid under an order of the Lord Chancellor; that two guineas were charged for drawing up a brief, which brief was merely a blank sheet of paper with an indorsement; that on one item four folios were charged as 20 folios; and an excess of 99 folios were charged in an answer. [*Parke*, B. Have you agreed that the amount taxed shall be the amount of the judgment.] Yes, and we are willing to withdraw our pleas and pay the costs of the trial.

Humfrey, for the plaintiff, was called upon by the Court, and objected that, under the circumstances, the defendants were not entitled to a rule,—but

Per Curiam. The offer made by the defendants is a very fair one. The defendants must pay all costs, including the costs of trial. The plaintiff to have his judgment as a security for the debt, to be entered up after taxation for the amount of the taxed costs.

Afterwards, on Jan. 22, 1848, *Whateley* made a further application referring to the 6 & 7 Vict. c. 73, s. 37, which provides for the payment of the costs of taxation in cases like the present. This case was not distinguishable from that of *In re Woollett*, 1 Dow. & L. 593, and he therefore trusted their lordships would vary their judgment in respect of the costs.

Humfrey. If there was a special power under the act, he could not object. But he would call upon their lordships to reflect that this action was for money for the payment of which the parties had given their deed. The person against whom the allegation was made was dead, and he put it to their lordships whether they would refer a bill which had been paid two years ago by a deed. At any rate, the party being dead, and the bill having been agreed to for three years, the Master ought not to tax the bill as if delivered yesterday, unless it should appear there were fraudulent charges. At all events, the plaintiff must not be in any way liable to the costs of this application.

Per Curiam. It must be referred to the Master for him to report if there are any fraudulent charges, and any other special circumstances which he may think fit; the costs of taxation to be reserved until the Master has made his report. The costs of this application to be costs in the cause.

Buron v. Denman. Jan. 23, 1848.

PRACTICE.—OCTO VEL DECEM TALES.

Where a rule will be made for a writ of decem tales for the trial of an action.

Robinson, for the plaintiff, moved that a writ of *decem tales* be issued for the trial of this action for which two days (the 6th & 7th of December last) had been already fixed, but the trial had not taken place in consequence of a deficiency of special jurors. He applied for the writ of *decem tales*, as they could not have a *tales de circumstantibus*,^a and there was no living person who could give any information as to the course which should be pursued. It appeared, however, from Brook's Ab. Tit. Octo Tales, that the number of jurors proposed to be added must be an even one, as 10, or 8, or 6.^b

Rule absolute.

Court of Bankruptcy.

In re Choates. May 3, 1848.

PROOF OF DEBT AFTER ARREST OF BANKRUPT.—PRACTICE.

A creditor who takes the bankrupt in execution after the issuing of the fiat, may prove, if it does not appear that he was aware the fiat had issued at the time the bankrupt was arrested.

A creditor, named Husband, tendered proof upon a debt for 67*l.* arising upon a bill of exchange accepted by the bankrupt before his bankruptcy and now overdue.

Mr. Bromley, as solicitor for the assignees, objected to the admission of the proof, under the following circumstances:—The fiat was dated on the 15th January last, and opened on the 18th of that month, and on the 21st of January the bankrupt was taken in execution by the creditor now seeking to prove, on a judgment founded upon this debt, and lodged in Ipswich gaol. The consequence of this proceeding had been, that the bankrupt's estate was put to a considerable additional expense, as the bankrupt had to be brought in custody from Ipswich to be examined. The rule was clearly laid down in Archbold's Bankruptcy, 10th Edin. p. 189. It was there stated, that "if a creditor take a bankrupt in execution after the issuing of the fiat, although this step be taken by the plaintiff's agent without his privity or consent, or although the bankrupt be afterwards discharged out of custody, he will not be allowed afterwards to prove under the fiat; or if he prove, his proof upon application will

^a This being a trial at bar, see 2 Litt. Ab. 552, and see also *Rex v. Perry*, 5 T. R. 467-8.

^b This appears very doubtful, see 2 Hale's P. C. 565; Reeves His. E. L. 263, 467; 10 Rep. 105, b.; Bac. Ab. Juriez, (C.) Cro. Jac. 316.—REPORTER.

be ordered to be expunged." And for this principle, the learned author cited, *Ex parte Hicklin*, Cook, 156; *Ex parte Caton*, ib. 157; *Ex parte Knowell*, 13 Ves. 192.

Mr. Commissioner *Evans*, after looking into the cases cited, said, he was of opinion that the admissibility of the proof turned upon the question, whether the creditor knew that the fiat had issued, when he directed the arrest of the bankrupt.

The creditor declared that he was totally unacquainted with the issuing of the fiat when the bankrupt was arrested.

Mr. Commissioner *Evans* inquired, if the solicitor for the assignees was prepared to prove that the creditor was aware of the fact, that

fiat had issued when he had the bankrupt arrested? As the fiat was not opened until the 18th January, it was extremely probable that the circumstance had not come to the creditor's knowledge before the 21st January.

Mr. *Bromley* was not in a position to prove that the creditor was aware that the fiat had issued, on the day the bankrupt was arrested, but he found no such qualification to the rule as laid down in the Treatises on Bankruptcy Law.

Mr. Commissioner *Evans*. I am of opinion that the proof is admissible, unless you show that the creditor knew of the fiat when he arrested the bankrupt.

Proof admitted.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF WILLS.

[For the previous Section of this Series of the Digest in the present Volume, See Law of Attorneys, p. 18.]

ABSOLUTE BEQUEST.

See *Interest on Stock*.

ANNUITY.

Charged on capital.—Upon the construction of a will, held, that an annuity was charged upon the capital as well as upon the income of the testator's estate. *Wroughton v. Colquhoun*, 1 De G. & S. 36.

And see *Disclaimer*.

CHILDREN.

See *Issue*.

CHARITY.

Uncertain bequest.—Where a testatrix, by her will, gave a certain annual sum for the use and benefit of the in-brothers and in-sisters for the time being actually and *bonâ fide* resident in the several hospitals of or in the vicinity of Canterbury: Held, that the bequest was void for uncertainty. *Flint v. Warren*, 34 L. O. 546.

And see *Grammar School*.

CODICIL.

Extent of revocation.—Testatrix, by will, bequeathed 3,000*l.*, in trust for C. for life, for her separate use, and, after her death, for her children; and in case there should be no such children, in trust for P. By a codicil, stating that C. had been largely provided for from other sources, the testatrix deducted the sum of 2,900*l.* from the legacy of 3,000*l.*, and revoked so much of the legacy accordingly, leaving C. 100*l.* only as a remembrance of her affection: Held, that the legacy of 3,000*l.* was revoked *in toto*, and that in lieu of it the legacy of 100*l.* was given for the absolute benefit of C.; and that P. took no interest either in the

100*l.* or any part of the 3,000*l.*: effect of conflicting dispositions in a will and in a codicil of the same residuary personal estate. *Sanford v. Sanford*, 1 De G. & S. 67.

CONSISTORIAL COURT OF LONDON.

A probate or administration granted by the Consistorial Court of the Bishop of London, is not sufficient to obtain the payment of money out of Court. *Druce v. Denison*, 34 L. O. 275.

DEVISE.

Uncertainty.—Construction of will where the House of Lords held that the devise was not void for uncertainty. *Lord Camoys v. Blundell*, 34 L. O. 274.

DISCLAIMER.

Provision for annuity.—A testator, by a will not executed so as to pass freehold estates, gave freeholds and copyholds to his brother, on condition of the latter joining the testator's nephew in the purchase of certain annuities, and gave to the nephew freeholds, leaseholds, and personalty, on a similar condition. The brother disclaimed: Held, that the nephew must make provision for one-half of the annuities.

One of the annuities was directed by the will to be paid to the widow so long as she should live, and if she had any child born, such sum to be continued for its life. There were three children born: Held, that the direction applied to the eldest only, and that, taking the annuity, she was bound to give effect to the other annuity, and to the gifts to the nephew as regarded the one-third share of freeholds which descended to her. *Wilson v. Wilson*, 1 De G. & S. 152.

EXECUTOR.

See *Legacy*.

EXECUTOR'S LEGACY.

The amount of a legacy to an executor who never acted, paid to him by the acting co-executor and residuary legatee who afterwards

died and appointed the former to be one of his executors, will not be ordered to be paid into Court for the purpose of securing an annuity bequeathed by their testatrix, and which the acting executor during his life had duly paid, but had neglected to secure. *Newton v. Jones*, 34 L. O. 524.

GRAMMAR SCHOOL.

Charity.—P. Blundell, by his will, dated in 1599, founded a free grammar school for 150 boys born, or, for the most part, before their age of six years, brought up in the town or parish of Tiverton; and directed that, if that number could not be filled up, the want should be supplied with the children of foreigners, and those foreigners only to be admitted with the assent and allowance of such 10 householders of the town as should be most in the subsidy books of the then Queen and her successors; and that there should be no scholar at the school under a grammar scholar; and after providing that there should be a master and usher for the school, and that their yearly salaries should be 50*l.* and 20 marks respectively, he willed that they should be content with that recompense, without seeking or exacting any more either of parent or children, it being his meaning that the school should be a free school, and not a school of exaction: *Held*, that terms "foreigners and children of foreigners" meant children who had not been born, or, for the most part, before the age of six years, brought up in the town or parish of Tiverton; that though it had long been the practice for the master and usher for the time being to take boarders, that practice ought to be discontinued; that there being no longer any subsidy books, a new qualification ought to be fixed for the 10 householders; that though some of the trustees of the charity property resided at a considerable distance from Tiverton, they ought not to be removed, notwithstanding the testator had directed that vacancies in the trusteeship should be supplied by persons near inhabiting; and, there being a surplus of the income of the charity property, that the salaries of the master and usher ought to be increased, and that the propriety of appointing more ushers, and of extending the education of the scholars to matters of science and literature, including one or more of the modern languages, ought to be referred to one of the Masters of the Court. *The Attorney-General v. Earl of Devon*, 15 Sim. 193.

Case cited in the judgment: *The Attorney-General v. Earl of Stamford* (the Manchester School case), 1 Phill. 737.

Cases cited in Lord Cottenham's judgment in 1841: *Attorney-General v. Earl of Stamford*, 1 Phill. 737; *Ex parte Rees*, 3 V. & B. 10; *Attorney-General v. Green*, 1 Jac. & Walk. 303; *Dean Clarke's Charity*, 8 Sim. 34; *Phillipott's Charity*, 8 Sim. 381; *Ludlow Corporation v. Greenhouse*, 1 Bligh. N. S. 17.

HEIR.

Death.—If an heir files a bill stating that his ancestor's will was duly executed and attested,

but dies before the cause is heard, leaving an infant heir, the will must be proved. *Hollings v. Kirkby*, 15 Sim. 183.

INTEREST ON STOCK.

Absolute bequest.—A bequest to S. H. of the interest arising out of 1,500*l.* stock for her during her life, and at her decease to descend to her heirs male or female; the said 1,500*l.* to be by no means sold whatsoever, except failure of issue, and then to descend to C. H. and his heirs for ever. *Held*, that S. H. took the 1,500*l.* absolutely. *Ousby v. Harvey*, 35 L. O. 410.

"ISSUE" CONSTRUED "CHILDREN."

1. Testator gave his residuary real and personal estate to trustees, in trust to pay the rents, interest, and dividends thereof, to his wife for her life, and, after her decease, to sell, convert into money, collect and get in the same, and to pay and divide the monies to arise therefrom, unto and equally amongst such of the children of his sisters Martha, Phœbe, Alice, &c., as might be living at the time of the decease of his wife, and the issue of such of them as might be then dead, in equal shares and proportions, such issue only to take the share which their respective parents would have taken if living; provided such children or issue should then have attained 21, otherwise, to pay to them the interest of their shares until they should attain that age, and then to pay them the principal. The testator's wife survived him. Each of his sisters had several children. A child of Martha died before the testator's wife, leaving children, and one of those children also died before the testator's wife: *Held*, nevertheless, that that one took a vested and transmissible interest in the testator's residuary estate. *Lyon v. Coward*, 15 Sim. 287; *Lyon v. Ball*, ib.

2. Though the word "issue" be, in one clause of a will, construed "children," it does not necessarily follow that it will receive the same construction in all the other clauses. *Hedges v. Harpur*, 9 Beav. 479.

LEASEHOLDS.

See *Residue*.

LEGACY.

1. *Substituted executor*.—Upon the construction of a will and codicil, *Held*, that a substituted executor was not entitled to a legacy of 100*l.*, given by the will to the original executor for his trouble in the execution of it. *Finch v. Secker*, 1 De G. & S. 34.

See *Option of Legatee; Executor*.

2. *Legacies charged on real estate*.—*Residue*.—On the construction of a will: *Held*, that certain legacies were charged on real estate, and that by the words, "I leave and bequeath to D. C. the sum of 2,000*l.*, and also to be my residuary legatee," it was intended that D. C. should take all the testator's residuary real estate. *Evans v. Crosbie*, 34 L. O. 301.

3. *Name of legatee*.—Where a testator by will gave certain trust funds and securities to

be divided between his next of kin "of the surname of Crump who should be living at the time of the decease of his niece" therein named: *Held*, that one of the female next of kin who at the date of the will fully answered the description, but who had afterwards changed her name by marriage, was entitled to a share of the property. *Carpenter v. Bott*, 34 L. O. 439.

LIFE INTEREST.

A testator bequeathed 10 Pelican shares to his son, and his heirs, executors, administrators, and assigns for ever," he paying the profits of eight to the testator's daughters for life, and, after their decease, the daughters' shares were to "return to his son and his issue," and, "in default of such issue," there was a gift over to the daughters and their "issue." *Held*, that, subject to the life interest of the daughters, the son was absolutely entitled to the shares. *Hedges v. Harpur*, 9 Beav. 479.

OPTION OF LEGATEE.

Bequest of 500*l.*, or an annuity of 25*l.* for life: *Held*, not to give the option to the legatee, but to the parties interested in the property, subject to the annuity. *Wilson v. Wilson*, 1 De G. & S. 152. *

PERSONAL ESTATE.

1. *Claim to reversion.*—Testator devised all his estates in the funds of England, and all his manors, messuages, lands, &c., both freehold, leasehold, and copyhold, to A., B., and C., and their sons, in strict settlement, and ultimately to his own right heirs for ever, and empowered his trustees to invest the residue of his personal estate in the purchase of freehold lands in England, and to convey the same to such of the uses thereinbefore declared of his manors, messuages, lands, and premises, devised by his will, as should be then subsisting.

A. and B. died, without issue, in the testator's lifetime. C., who was his heir-at-law and executor, was living, but had no issue male.

The testator's next of kin filed a bill against C., praying, amongst other things, for a declaration that, in the event of C. dying without leaving issue male, the plaintiff would be entitled to the testator's personal estate. A general demurrer to the bill was allowed. *De Beauvoir v. De Beauvoir*, 15 Sim. 163.

2. *Exoneration of personal estate.*—A testator devised his real estate to trustees in trust for sale, and out of the proceeds and out of the rents till sale, to pay his debts and the trustees' costs, charges, and expenses, and then upon trust to pay three legacies of 300*l.* each; and as to all his personal estate and effects, the testator gave the same to T. R., his executors, administrators, and assigns: *Held*, first, that the will did not give to T. R., nor dispose of, the surplus of the beneficial interest in the produce of the testator's real estate, after paying the charges which ought to be considered as imposed thereon; and that such surplus belongs to the heir-at-law.

Held, 2ndly, that, as between the heir and T. R., the personal estate is the fund first applicable to the payment of the testator's debts. *Seemle*, that the 3 & 4 W. 4, c. 104, ought to have some influence in favour of the exoneration of the personal estate.

It was conceded *arguendo*, that funeral expenses and costs of probate were not included in the costs, charges, and expenses of a testator's trustees. *Collis v. Robins*, 1 De G. & S. 131.

Cases cited in the judgment: *Bootle v. Blundell*, 1 Mer. 192; *Lord Inchiquin v. French*, Amb. 33; *Duke of Ancaster v. Mayer*, 1 Bro. C. C. 454; *Webb v. Jones*, 2 Bro. C. C. 60; *Burton v. Knowlton*, 3 Ves. 107; *Brummel v. Prothero*, 3 Ves. 111; *Brydges v. Phillips*, 6 Ves. 567; *McClelland v. Shaw*, 2 Sch. & Lef. 588; *Watson v. Brickwood*, 9 Ves. 447; *Tower v. Lord Rous*, 18 Ves. 132; *Greene v. Greene*, 4 Mudd. 148; *Michell v. Michell*, 5 Madd. 69; *Driver v. Ferrand*, 1 Russ. & My. 681; *Blount v. Hipkins*, 7 Sim. 43; *Lamp-hier v. Despard*, 2 Dru. & W. 59; *Bootle v. Blundell*, 1 Mer. 219—21.

PORTION.

Furniture.—Debt.—Devise.—A devise of a life interest in real property to B., who was under covenant to make the portion or fortune provided for C. equal to that provided for B., held to create a debt equal in amount to the value of the devise, payable out of all A.'s real estate, under a general charge for the payment of his debts. But a bequest of furniture to B. held not to fall within the definition of the fortune or portion provided for her, and, therefore, not to create a similar obligation. *Eardley v. Owen*, 35 L. O. 409.

POWER.

1. Upon the construction of an instrument creating a power of raising portions: *Held*, that the donee had a right to distribute the portions unequally. *Cotgreave v. Cotgreave*, 1 De G. & S. 38.

2. S. having a general power of appointment amongst his children under his marriage settlement by a deed-poll executed without any consideration, releases all his right and title to exercise the power, but subsequently, by his will, appoints certain of the settled money amongst his children: *Held*, that the release absolutely destroyed the power. *Smith v. Plummer*, 35 L. O. 323.

PROBATE, RECALL.

After probate has been granted, the Court will not interfere to restrain parties who, if the probate stands, would be entitled to dispose of the funds in respect of which it has been granted, from dealing with those funds, merely because a suit has been instituted to recall the probate. It is necessary to show a probability of danger to the fund. *Newton v. Ricketts*, 34 L. O. 462.

REAL ESTATE.

Seemle, that where a will of real estate is to be established, it should not be produced on a

later day than the date of the decree in the cause. *Seale v. Buller*, 35 L. O. 192.

See *Legacy*, 2.

RESIDUE.

1. *Enjoyment in specie.—Leaseholds.*—Testator bequeathed the residue of her estate, goods, chattels, and effects, which she should be possessed of, interested or intitled to at her decease, to trustees, with very special directions to apply the whole of the income thereof, for the benefit of her daughter, (who was a lunatic,) for her life.

Held, nevertheless, that the bequest of the residue was not specific, and consequently, that certain leasehold houses, which formed part of it, ought to be sold and the proceeds invested in the 3 per cents. *Chambers v. Chambers*, 15 Sim. 183.

Cases cited in the judgment: *Howe v. Lord Dartmouth*, 7 Ves. 137; *Pickering v. Pickering*, 4 Myl. & Cr. 289; *Bethune v. Kennedy*, 1 Myl. & Cr. 114; *Collins v. Collins*, 2 Myl. & K. 703.

See *Legacy*, 2.

2. *Gift of.*—Where a testator gave the residue of his property in trust to be divided into eight parts, one of such parts to be the property of and paid to his six sons, one other part to be paid to his daughter on her attaining 24, and in case of her death under that age, her share to be divided equally amongst his six sons, and the remaining eighth part for the benefit of his grandchildren: *Held*, that each of the six sons took an eighth part of the residue. *Pollock v. Pollock*, 35 L. O. 293.

REVOCATION.

See *Codicil*.

TRUST FOR MAINTENANCE.

Where a sum of money was given to *T. B.* to bring up and maintain *F. B.*, *Held*, on the construction of the will, that the sum was given absolutely to *T. B.* *Ward v. Biddles*, 34 L. O. 565.

UNCERTAINTY.

See *Charity; Devise*.

VESTED INTERESTS.

1. Testator gave the residue of his real and personal estate to his trustees in trust for his three nephews, their heirs, &c., as tenants in

common, with cross remainders and benefit of survivorship, in case any of them should die before their shares in the trust property should become vested in them; which he desired might not be shared until his youngest nephew should attain 24; and he directed his trustees to maintain and educate them, out of the income of the property, during their minorities. The nephews were infants at the testator's death.

Held, nevertheless, that they took vested interests under the will. *Parkin v. Hodgkinson*, 15 Sim. 293.

2. Testator directed the dividends of two sums of stock to be equally divided between all his nephews living at his decease, and, after the decease of any of them, the capital of his share to be sold and the proceeds to be divided amongst his children; and, in default of such issue, then to go and be divided amongst the children of *A.*, and, in case all *A.*'s issue should be dead, then to be divided amongst the children of *B.* *A.* had four children: three of them died; and then one of the testator's nephews died without issue. *Held*, that the three deceased children, as well as the surviving child of *A.*, took vested and transmissible interests in the deceased nephew's share of the stock. *Cohen v. Waley*, 15 Sim. 318.

3. *Legacy.*—Where a testator by his will directs his trustees, at their free will and pleasure, without the consent of his wife, to sell and dispose of such parts of his messuages and tenements by his will given to her, and to pay such parts of the monies to arise from such sale, not exceeding 200*l.*, to each of his sons for setting them up in business, or for such other purposes as his wife should think fit: *Held*, that one of the sons who had died without receiving the 200*l.* took a vested interest in the same, and that his legal personal representatives were entitled to have the sum raised. *Gough v. Bult*, 35 L. O. 64.

4. *Accumulations.*—Bequest of testator's residuary estate on trust to convert and pay unto equally between and among his great-grandchildren at 25, or otherwise apply the same for their use and benefit as his executors should think proper: *Held*, void for remoteness. Similar clauses in two deeds confirmed by the will: *Held*, void for the same reason. *Jarvis v. Cardale*, 35 L. O. 171.

BUSINESS OF THE COURTS.

Queen's Bench.

Easter Term, 11 Victoria.

This Court will, on Saturday the 13th, and Monday the 15th days of May inst., at 10 o'clock in the morning, hold Sittings, and will proceed in disposing of the business in the Special Paper, the New Trials and Crown Papers, and give judgment in cases previously argued.

By the Court.

Exchequer of Pleas.

Easter Term, 11 Victoria.

This Court will hold Sittings on Saturday, the 13th, Monday the 15th, and Tuesday the 16th days of May, instant, and will proceed in disposing of the business pending in the Paper of Demurrers and in the Paper of Special Cases.

By the Court.

Read in open Court.

EDWD. BENNETT.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MAY 20, 1848.

‘Quod magis ad nos
Pertinet, et nescire malum est, agitamus.’

HORAT.

MEETING OF THE BAR.—NON-PAYMENT OF PARLIAMENTARY FEES.

We announced in last Saturday's number, that the Attorney-General had convened a meeting of the Bar for that day, in Lincoln's Inn Hall, at which it was understood some circumstances connected with the non-payment of parliamentary fees would become matter for discussion. The meeting accordingly took place that day, and was most numerously attended; indeed, we are informed that the old hall was inconveniently crowded.

Owing, we apprehend, to the exclusion of the regular reporters, the accounts which have appeared in the newspapers as to what occurred at the meeting are meagre and not altogether accurate. The statement of the circumstances which led to this meeting is erroneous in many respects, and has caused much misapprehension. We may be permitted, therefore, to preface the report as well as the observations which suggest themselves, by stating, simply and concisely, the facts as we understand them, which induced the Attorney-General to assemble the Bar on this occasion.

Several gentlemen, practising as counsel before parliamentary committees—as well leaders as juniors—had permitted the agents representing certain railway companies to become largely indebted to them for fees in respect of professional services rendered on behalf of the companies in question. A considerable portion of the fees due for business done in the Session of 1846, and

nearly the whole of the fees for business done in the Session of 1847, remained unpaid at the commencement of the present year. In the interval between the re-assembling of parliament after the Christmas Recess and the end of the month of April, repeated, and in many instances unsuccessful, applications were made for the payment of the fees thus in arrear, and in consequence the Parliamentary Bar held a meeting, at which it was resolved that their clerks should be directed not to receive any further briefs on behalf of the companies whose agents were in default, until the fees due at the termination of the Session of 1847 had been paid up to *all* the counsel engaged during that Session on behalf of the companies in arrear. This resolution having been acted upon by the clerks of some of the leading counsel, produced a result that does not seem to have been anticipated. The agents of the companies against whom the resolution was more especially directed, cancelled the general retainers held on their behalf by certain leading counsel at the Parliamentary Bar, and tendered their briefs with the fees to two members of the junior Bar, Messrs. Keating and Smith. These gentlemen, who were themselves parties to the resolution, an adherence to which had caused the briefs in question to be withdrawn from the leading counsel, expressed an indisposition to accept the briefs offered to them under such circumstances, and their acceptance having been insisted upon on behalf of the professional client as matter of right, the subject was brought under the consideration of the Attorney-General, who

at once decided that the juniors already alluded to were bound to accept the briefs tendered to them in the ordinary way. Great reluctance having been manifested by the parties immediately concerned to act in conformity with this decision, another meeting of the Parliamentary Bar was holden, at which it was resolved, that it was competent for those who had signed the original resolution to decline, if they thought fit, to accept briefs tendered on behalf of the companies whose default had occasioned the original resolution. This resolution having been submitted to the Attorney-General, he deemed it his duty to submit the question to a general meeting of the Bar, and the meeting on Saturday was accordingly held. With the result of that meeting we may at once express our unqualified satisfaction. It was in every respect honourable to the feeling and spirit of the Bar. The narrow and selfish—we will not add sordid—views which dictated the resolutions of the “parliamentarian” section found neither favour nor sympathy from the great body of the Bar.

The novelty of the occasion, no less than its importance, will probably justify us in the opinion of our readers, for publishing a full report of what fell from the several speakers who addressed the meeting. The subjoined report has been collected from various sources, and we may venture to assert is fuller, as well as more accurate, than any that has yet been submitted to the public:—

The Attorney-General opened the business of the meeting, by stating the circumstances under which he had been induced to invite the attendance of the Bar, and called upon Mr. M. D. Hill, as the senior member of the Parliamentary Bar, to submit the resolutions which had been agreed to by a portion of the Bar to the meeting.

Mr. Hill then rose, and said, that in consequence of the difficulty arising in respect of the business transacted at the Parliamentary Bar, the leading members who practised there had come to a resolution to direct their clerks not to take any briefs unless the fees which had become due in the previous session had all been paid. The object of this resolution was, that the barristers might protect themselves against the improper course which had been taken by various parties in omitting to pay the fees that had become justly due. He considered this a most proper and wholesome rule, and calculated to raise the character of the profession, and he thought that any members of the Bar who had signed this resolution were justified in refusing to take any briefs from persons who had omitted to pay their fees. He should, therefore, move first, that it was the

opinion of this meeting that it was competent for the parliamentary barristers to enter into the resolution they had done; and secondly, that it was as competent for any member of the Bar, who had signed that resolution, to exercise his judgment in refusing to take a brief offered to him where the fees had not been so paid.

The *Solicitor-General* said, he had consulted with very many of his friends—chiefly those who practised at the Chancery Bar—as to the propriety of the proceeding adopted by the Parliamentary Bar, and he expressed the feelings of all with whom he had spoken, that these resolutions were most objectionable. He disapproved altogether of a meeting of the Bar for considering a question solely relating to the way in which fees were to be taken. The gentlemen who complained had the remedy in their own hands; the old rule of the Bar had always been that no brief should be taken unless the fee were paid upon it, and if any section of the Bar thought fit to deviate from that principle, either for the convenience of themselves or their clients, the matter was purely personal, and they ought to bear the responsibility of their conduct. Another rule of the Bar was, that no barrister could refuse to take a brief, except under peculiar circumstances; he did not think the present case was one which justified a departure from that general rule. It was altogether contrary to the dignity of the Bar that a combination should be made for the purpose of forming a rule as to how the payment of fees should be enforced. If this were allowed, there would soon be a combination for refusing fees under a particular amount, and various other resolutions which would be quite inconsistent with that high character which the Bar of England had always maintained. The profession had nothing to do with the recovery of fees, and it would be degrading it to a trade to adopt measures with such an object. As to the second resolution, the meeting would recollect that every client—he did not mean the professional clients but the actual suitors—had the right of retaining any particular barrister not engaged at the other side, by delivering him a brief in the ordinary way. This rule was the protection of the Bar. It was also the undoubted right of every client to cancel at discretion any retainer given to a particular counsel. The resolutions now submitted to the meeting were at variance with those established and well known professional rules. It was his intention, previously to entering the hall, to have moved resolutions expressive of his disapprobation of the principles which the meeting had been called upon to sanction; but since the commencement of the proceedings he had altered his mind, and with the concurrence of a great many of his friends, he would simply move a resolution in the negative, that it is not competent for the members of the Bar to refuse to take briefs where the fees previously incurred to other members of the Bar have not been paid, and that it is not competent for any member of the Bar who shall

have signed such resolution to act in accordance therewith.

Mr. Serjeant *Talfourd* concurred with the sentiments expressed by the Solicitor-General. The learned serjeant instanced a case in which in the early part of his career he had personally been a sufferer. In the matter of the disputed claims respecting the Deccan prize-money, credit had been given for fees to the amount of 6,000*l.*, the parties relying upon the undoubted honour and means of the solicitor, and upon a warrant from the Crown to pay the costs out of the disputed fund. The solicitor died insolvent, and the sum due to counsel was retained out of the prize-money, but the successful claimants filed a bill in equity against the parties entitled to the fees. The counsel with him were Sir Herbert Jenner Fust, the late Mr. Harrison, and the present Lord Brougham, but Lord Brougham had compromised the matter, and he was not a party to the bill. (Loud laughter.) The ground on which the bill proceeded was, that the fees had been supplied by the claimants to their solicitor as the cause proceeded, and that they had been lost by the laches of the counsel in giving credit to the solicitor. The bill was dismissed, but the then Attorney and Solicitor-General (Lord Campbell and Mr. Baron Rolfe) were clearly of opinion that counsel were not entitled to the fees for which they had given credit, and though his stake in the matter was small, he knew that his friends Sir Herbert Jenner Fust and Mr. Harrison lost a large sum in consequence of that decision.

Mr. *Talbot* rose to support the resolutions with unaffected feelings of diffidence and some degree of apprehension. It was no light matter that he and his learned friends who had joined in those resolutions, with a view of maintaining the honour of the profession, should now be regarded somewhat in the light of culprits coming to defend themselves. It would be necessary for him in some measure to explain the nature of the proceedings in parliamentary practice, as he had no doubt there were many gentlemen present who were unaware of the difference which existed between that practice and any other. It was impossible, he said, in that practice, to carry out the general rule as to the pre-payment of fees. It was out of the question to calculate beforehand the length of time which the business might occupy, or the quantum of labour that might have to be expended upon it. The practice had therefore grown up of allowing a certain time after the conclusion of the business for the payment of fees. This leniency, he was sorry to say, had been greatly abused, and it was not an uncommon thing for the solicitors or parliamentary agents absolutely to refuse payment of the fees, and then to take their papers to another barrister, and the same course might then be repeated. Gentlemen might well imagine what a disagreeable position any barrister of honourable feelings was placed in, when he was obliged from week to week to make applications for payment of the fees

which had been fairly and hardly earned. These sort of solicitations, he could assure the meeting, although repeatedly made, were very often without the slightest effect, and the members of the bar were utterly unable to obtain redress. It was in consequence of such constant occurrences that the resolution had been come to by which the section of the profession practising at the Parliamentary Bar determined not to receive briefs, unless all fees to counsel who had been previously engaged were paid up to the end of the Session of 1847. It had been said that every gentleman might act for himself in this matter, and refuse briefs unless his own fees were paid, but that anything like combination was objectionable. The combination, however, was only formed for protecting the weak. A junior suggested that if the resolution was carried that briefs were not to be received unless the arrears were paid, the leaders' fees would be paid, but the companies in question would take their briefs from the juniors without paying the arrears. He (Mr. *Talbot*) thought this ought not to be, and that the strong were bound to throw their shield over the weak. It may be said this was derogatory to the profession, and was reducing it to a trade. The Solicitor-General had said, unjustifiably, as he thought, that it was analogous to a resolution not to work without higher wages. That expression ought not to have been used.

The *Solicitor-General* begged to assure his hon. friend that he had used no such expression.

Mr. *Talbot* resumed. He was pleased to hear he had been mistaken, and that his hon. and learned friend had not used the expression he considered objectionable. He should only state in conclusion, on his own behalf, and on the part of those with whom he acted, in coming to the resolutions now so much condemned by the Solicitor-General, that whether they had acted rightly or wrongly, they were only actuated by a strict sense of honour and upright conduct, and had taken the course they had done solely with a view of supporting the dignity of the Bar, and carrying out those resolutions which they considered for the general benefit of the barristers practising before parliament.

Sir *Frederick Thesiger* said, he could neither support the resolutions proposed by Mr. Hill, nor could he consent to the negative resolution moved by the Solicitor-General. His opinion was, that this was not a subject which called for any interference on the part of the Bar. If any question arose respecting the conduct of any gentleman at the Bar, it might be desirable to have an expression of opinion from the whole body of barristers; but he could not think that where any point was raised as to the manner in which any section of the Bar thought fit to act respecting the payment of fees, that it was at all necessary to have a meeting of the Bar to decide upon the question. It was the duty of each barrister to act as he thought most in accordance with his own feelings of honour and

propriety, and not to call upon the Bar to give any expression of opinion upon the subject. If this were to be done upon every occasion, the Bar would have to decide all contested points upon each individual case of hardship which any member might wish to bring forward. He should therefore move, what in parliamentary proceedings would be called "the previous question," the effect of which would be, in fact, that no resolutions whatever should be proposed. (Cries of "No, no.")

Mr. *Cockburn*, with much warmth of manner, defended the conduct which had been pursued by the members of the Bar practising in the parliamentary committees. The learned gentleman then addressed himself to that portion of the Solicitor-General's speech in which he had stated it to be a rule of the Bar, that every barrister must under all circumstances accept a brief when offered to him. This proposition he denied most emphatically; there might be many cases in which a barrister might think it right to refuse a brief, and it was at his own option to do so if he thought fit. The profession would otherwise be reduced to the same rules that were enforced with respect to cab-drivers; they would be bound against their conscience, and contrary to their feelings of what was just, to support any claim that might be put forward; nothing could be more calculated to lower the character of the profession or degrade its members. He contended, that it was perfectly competent for Mr. Keating or Mr. Smith, knowing as they did that Mr. Talbot had been shamefully and abominably treated, to refuse the briefs tendered to them under the circumstances. He concluded by submitting an amendment to the effect, "that it was competent for a barrister in the exercise of his discretion, but without any reference to his own emolument or interest, to refuse any brief that was offered to him."

Mr. *Humfray* addressed the meeting in favour of the course proposed by the Solicitor-General, but was heard with some impatience. It was preposterous, he observed, that one barrister should take upon himself to refuse receiving a brief until other barristers were paid. How could one barrister tax the fees of another? The difficulty in which those who practised in parliament found themselves, was occasioned by their own acts. Briefs were delivered without fees, and the amount not filled up until the end of the session. (Cries of "No, no.") He could not doubt his own eyes that this was so.

Mr. *Malins* said, that as the meeting had been hearing a great deal from the leaders of the Bar, perhaps they would not be unwilling to hear a junior. (Cries of hear, hear.) He rose for the purpose of expressing what he believed to be the opinion of nearly all the junior members of the profession. He thought that it was not competent for a general meeting of the Bar to come to a decision not to receive any briefs upon which previous fees to other counsel had not been paid; and it certainly was not com-

petent for any section of the Bar to pass such a resolution. He considered that the question as to the power of barristers to refuse any brief rested upon a much broader basis than had been presumed by Mr. Cockburn. It was the duty of counsel to accept a brief from whatever source it might come, and he had no right whatever to refuse it. This was a matter which affected the rights of every individual. It was not in respect of their professional clients that he considered this question rested, but he contended that the rights of the clients who were really interested in the decision of a cause required that they might command the talents of any member of the Bar whom they considered most likely to benefit their cause; and it was not because of some dispute their solicitors might have with any particular counsel that they were to be deprived of such right. He would carry the matter still further, and contend that a barrister was bound to receive a brief presented to him with the fee paid upon it, even from a client who might be indebted to him in any amount for previous business transacted for that client. He was well aware that in many cases losses had been sustained by members of the Bar in respect of fees, but the only remedy was to adhere strictly to the rule of the profession, not to receive briefs unless the fees were paid at the time the briefs were delivered. If any counsel chose to depart from this rule, it was a matter between him and his client, but there was no necessity for the interference of the Bar. He regretted very much, and he believed he expressed the opinion of all his friends, that such a resolution had ever been come to by the parliamentary counsel. This resolution having been submitted to the meeting, they were called upon to express a decided opinion on it. It was an affront to the other branch of the profession. For himself, and he believed he might say as much for all his learned friends, there was no ground for general complaint to be made against solicitors or attorneys.

Mr. *Peacock* followed on the same side, and pointed out the absurdity that would follow from carrying to the fullest extent the principle embodied in the resolutions.

Mr. *W. P. Wood*, Q. C., also condemned the resolutions, but was desirous of expressing his disapproval in terms that would not be offensive to the members of the parliamentary Bar. The learned gentleman also observed that the system of giving credit for fees was objectionable, because it led to the possibility of one counsel being selected before another, because he gave longer credit.

Several other members of the Bar seemed desirous of obtaining a hearing, but the cries of "Divide" became so general, that the Attorney-General put it to the meeting whether they would hear any further arguments, and it having been decided almost unanimously that a division should take place, the learned chairman proposed the amendment of Mr. Cockburn, which was negated by a large majority. Sir Frederick Thesiger's amendment was also

negated, and upon the resolutions being put, the meeting decided in favour of the Solicitor-General's resolution, in opposition to the resolutions proposed Mr. Hill, almost unanimously, there having been not more than 20 hands held up in their favour.

The *Attorney-General* then said, he agreed with the opinion which had been expressed, that barristers were bound to receive briefs whenever they were offered, if accompanied by the usual fee; but he would allow that there were some peculiar cases in which a barrister might be justified in refusing a brief. He considered, however, that the present case was not one where this rule could be dispensed with. He would point out one great inconvenience that would arise from this course being pursued. If a counsel, acting upon such a resolution as that adopted by the counsel practising at the Parliamentary Bar, were to refuse a brief, it would be offered to another gentleman, who would consider himself bound in honour to adopt the same rule, and the brief would then devolve upon some other gentleman who had not the same delicacy of feeling. He was fully satisfied that the gentlemen who had originated the resolution in question had acted with the most perfect good faith and honourable impressions, but still he could not agree with them in the propriety of the course they had taken.

A vote of thanks to the *Attorney-General* for his able conduct in the chair, was then proposed by the *Solicitor-General*, seconded by Mr. George Turner, and carried unanimously, after which the meeting broke up.

In reviewing the proceedings of this meeting, we would anxiously avoid observations disrespectful to any of the parties concerned, however much we may differ from them. Indeed, the course adopted at the meeting affords so much matter for congratulation, that we may be well excused for avoiding the ungracious office of condemning what fell from any of the speakers. The result leaves nothing to be regretted, and little further to be said on the subject under discussion.

The *Solicitor-General*, taking that prominent position which his station in the profession, his hereditary claims on it, and his private character justly entitled him to, met the resolutions of the Parliamentary Bar with a decided negative. He pointed out in terms not less forcible from the simplicity and brevity with which they were expressed, how derogatory it was to the dignity and character of the Bar that a section of its members should enter into a combination on the subject of fees; and he enunciated the principle, afterwards very ably amplified and expounded by two members of the junior Bar who addressed the meeting, that the acceptance of a brief ten-

dered in the regular manner, in a case depending before a tribunal at which the counsel was accustomed to practise, was a right, not of the professional client, but of the real suitor whose interests were involved in the litigation.

Sir Frederick Thesiger proposed to avoid determining the question the meeting was assembled to discuss, upon the ground that it was a matter with which the Bar as a body had no concern. The grounds upon which he recommended this temporising expedient, we rejoice to find, neither satisfied the feelings nor convinced the judgments of those he addressed, and his proposition met with very limited support.

At a later stage of the proceedings, and when the deliberate sense of the meeting had been very unequivocally demonstrated, Mr. Cockburn came to the rescue of his parliamentary friends, by adroitly proposing an amendment which, although it involved an abstract principle that may have fairly commanded the assent of a majority of those who were present—namely, that occasions might arise in which a barrister would be justified in declining to hold a brief presented in the regular manner—was obviously quite beside the question the meeting was called upon to determine. As pointedly and conclusively put by both the *Attorney* and *Solicitor-General*, admitting that there might be exceptions to the general rule that a barrister is bound to hold a brief in a court in which he practises, when such brief is regularly presented, the circumstances under which the Parliamentary Bar resolved to act did not fall within the exceptions.

The amendment of Mr. Cockburn was therefore rejected by an overwhelming majority, and the resolutions of the Parliamentary Bar met by a direct and all but unanimous negative from the largest Bar meeting ever held. Perhaps it had been better that the question had never been mooted, but as it was formally brought under the consideration of the profession, the result cannot be deemed other than satisfactory.

FEES IN COURTS OF LAW AND EQUITY.

SECOND REPORT.

THE Select Committee appointed to inquire into and report to the House on the Taxation of Suitors in the Courts of Law and Equity by the collection of Fees, and the amount thereof, and the mode of collection, and the appropriation of Fees in the Courts of Law and

Equity, and in all Inferior Courts, and in the Courts of Special and General Sessions, in England and Wales, and in the Ecclesiastical Courts and Courts of Admiralty; and as to the Salaries and Fees received by the Officers of those Courts, and whether any and what means could be adopted with a view of superintending and regulating the collection and appropriation thereof; and who were empowered to report their opinions thereupon, from time to time, to the House;—Have considered the matters to them referred, and have agreed to the following Resolutions:

1. That all officers of the Court of Chancery ought to be paid by salary.

2. That to supply the stimulus to exertion arising from remuneration by fees, the due and efficient performance of the duties of the officers ought to be secured by supervision, by the responsibility of the superior, by advancement for merit, and by removal for misconduct.

3. That for the purpose of securing proper supervision, the establishment of a supervisor is necessary.

4. That the subordinates in each office should be under the control of the superiors, who should be responsible for the due performance of their duties.

5. That each person in the office should be advanced to the higher grades by the Lord Chancellor, according to his merit; and that, in order to enable him to judge thereof, regular annual reports should be made by the supervisor to the Lord Chancellor.

6. That all persons should be liable to be removed in every office for misconduct or for permanent inability to perform the duties thereof,—the superior of the office by the Lord Chancellor and Master of the Rolls; the inferior by the Lord Chancellor alone; on proof of such misconduct, or of such permanent disability.

7. That each officer should receive a retiring pension for permanent disability after a stated period of service, or without permanent disability, after a further period of service.

8. That the fees taken should be carried into one fund, and applied in the most efficient and economical manner in promoting the interests of the suitors; that is, the support of such officers as are not paid out of the Consolidated Fund.

9. That in taking of fees the following things are to be provided for:—

1. That no more is levied than is absolutely required for the purpose for which fees are imposed.

2. That all fees imposed shall be actually levied.

3. That the whole amount levied is applied for the purposes for which the fees are levied.

10. To promote the first object it is important to consolidate offices as much as possible, and to discontinue useless offices and forms of proceeding.

11. To promote the second object, it is es-

sential to provide a test of payment, so that no person should be able to escape the payment of the fees imposed.

12. To promote the third object, it is essential to provide a check, whereby the total amount levied may be paid into the Fee Fund.

13. To promote all three objects, it is essential that fees should be consolidated, so as to be made as few in number as possible.

14. That the fees should be levied with as little inconvenience to the suitor as possible, and should, as nearly as may be, represent the amount of benefit derived by him.

15. That the amount required for the maintenance of the Court of Chancery, when the income arising from the Suitors' Fund is insufficient to pay, should be raised in the following manner: viz.—

* 1. That a poundage of one-half per cent. should be paid on the investment of all sums of money paid into Court, and one-half per cent. on the payment of all dividends, and one-half per cent. on the passing of the accounts of all receivers.

* 2. That a fee of sufficient amount to make up the rest of the income required, should be paid on every order pronounced by the Court.

16. That no other fee of any sort or description should be taken in an office of or connected with the Court of Chancery.

As to the Consolidation and Abolition of Offices.

17. That the office of Clerks of Accounts should be abolished.

18. That the office of Master of the Reports should be abolished.

19. That the Affidavit-office should be abolished.

20. That the business now transacted in the office of the Master of the Reports, and in the Affidavit-office, should be transferred to the office of the Clerks of Records and Writs.

21. That Orders of Course should be abolished as far as practicable, and that such as it may be considered expedient to continue should be transferred to the Registrars' Office, and be drawn by them; and that the drawing and issuing thereof at the Rolls should be discontinued.

22. That the number of Masters in Ordinary should be reduced.

23. That the system of brokerage on suitors' funds should be discontinued, and that the Accountant-General should be paid by a salary, and that only the balance of the stock required to be bought or sold in each day should be bought or sold by the broker, and that the one-eighth per cent. on the funds transferred thereby saved to the suitor, and which, but for this alteration, would have been actually bought and sold, should be paid to the Suitors' Fee Fund for the benefit of the suitors.

8th May, 1848.

NOTICES OF NEW BOOKS.

Popular Letters on Special Pleading, addressed to those about to enter on the Study of the Common Law. By JOSEPH PHILIPS, Esq., M. A., of the Inner Temple, Special Pleader. London: William Beuning & Co. 1848. Pp. 55.

THE object of this short treatise is well stated in the preface, from which we make the following extract:—

“It is well known that the great majority of Common Law Students who enter at the Inns of Court, with a view of preparing for the Bar,—many of them fresh from the Universities,—on commencing their studies in London know next to nothing about Law, and literally nothing about Special Pleading or the general business of the Pleader. In this state they enter chambers; and here the pupil undertakes the first case, has the range of the library, and also the instruction and assistance of the pleader so far as he has time to give it.

“The newness of the scene, the collection before him—books of precedents, works on pleading, on contracts, on torts or wrongs, and again even large volumes on divisions merely and subdivisions of these subjects,—the reports, the statutes,—all together tend to throw him into almost hopeless perplexity. He asks many questions, there are many others that he would like to ask, and which perhaps would only do him credit if he did ask, and yet he does not, partly from a fear of being thought wanting in apprehension, and partly from a desire not to occupy too much time with such inquiries; and the danger now is that his hesitation will turn into disgust or a settled indifference that may not afterwards be very easily overcome. I therefore think that a few letters of a popular and easy character relating to the business of a Special Pleader, with a few illustrations, will not be unacceptable to those who are about to become students at law, and as yet know nothing of law; and I should wish by this means to convey to them some general notion of the subject, that both may in itself be useful, and may also enable them to see a little beyond the mist and confusion that they must encounter at the outset of their career. I do not pretend that within so small a compass, and in such a form, much knowledge of law can be conveyed, but I think that by a slight sketch of this kind I propose, those for whom it is intended may be led to perceive that the task they have chosen is not by any means one of overwhelming difficulty, and that the mere technicalities being surmounted by some patience and industry, they have only before them a very pleasant exercise for the intellect, and a course of reading and balancing of opinion, which independently of its being blended with their future prospects, is about to be of great service to them in improving and strengthening their understanding and judgment.”

The work consists of eight letters, in which Mr. Philips has comprised his concise view of special pleading, and which, so far as the subject is capable of it, he has rendered popular, or at least presented in a form less technical and repulsive than it must generally appear to the legal student. We recommend it to the perusal of our young readers in both branches of the profession.

COUNTY COURTS' PRACTICE.

To the Editor of the *Legal Observer.*

SERVICE OF PROCESS.

SIR,—I beg respectfully to call your attention to the dilatory and very inefficient practice established in these new “easy and expeditious courts,” and to the grievous expenses entailed upon the suitors. In the first stage of the proceedings, viz., the issuing of the *plaint*, (to a lawyer,) there is no difficulty whatever, but in the service of it personally on defendant, as required by the act, not only great difficulty is experienced, but delay and expense unnecessarily incurred. In one of the courts with which I am acquainted the bailiff's officer calls at the defendant's residence once and inquires if defendant is at home, if the answer should be “not at home,” he leaves the *plaint* with the person who answers the door, taking down the name of that party, and retires satisfied that he has done his duty. The officer does not take any further trouble in the matter; he does not make a second call to ask if the *plaint* has reached defendant's hands; he does not make any of those endeavours to effect a service in the way an attorney's clerk would do. The officer of the court is a perfect stranger to the defendant, he knows nothing of his person or habits, when defendant is at home or elsewhere, all of which the plaintiff's attorney is familiarly acquainted with.

I will give you one out of five instances, in which this part of my subject have shared the same fate. I had occasion to summon a lady at ——. She resided in her own house, was accessible to myself and all her friends, and anybody else who chose to call at reasonable hours. The officer of the court called in the manner already described, left the *plaint* with a Mrs. B., only asking her name; he did not even ask whether she was a servant, a lodger, or a visitor, or even whether she resided in the house. On the 10th day before the hearing, I called at the court to ascertain if defendant had been served, (for I understand that no attempt is made to serve the process till the last day of service, which must be 10 days before the day of hearing, although it frequently happens that it might be served a week previous). Finding, in point of fact, that the officer could tell me nothing more than that he had left the *plaint* with a Mrs. B. at defendant's house, I was obliged to find out myself who

and what Mrs. B. was, and by dint of perseverance and more expense, I discovered that Mrs. B. was no other than defendant's domestic servant, whereupon I was obliged to go back to the court and give directions to the same officer to serve Mrs. B. with a subpoena to appear at court on the day of hearing, to state to the court what she had done with the plaint; and fortunately for me, Mrs. B. was subpoenaed and did appear at the appointed time, and did in a very simple manner inform the court that she had given the process to her mistress.

Now, let me ask you, (regardless of the additional cost of the subpoena,) have I not made out a case which entitles the suitor to an alteration of the practice in these Courts, as respects the service of its primary process? Is it to be endured, that a suitor is to be vexed and harassed in the manner I have been? If I could have issued the process in question in like manner as any suitor can do in the Superior Courts at Westminster, and serve it himself or place it in the hands of a person who can, without loss of time or unnecessary expense, effect the service, is it not desirable that the suitor should be enabled to do so by having the control of the service of process for which he has paid, in most cases treble the amount he would pay for a writ in any of the Superior Courts. I do not seek to cast any blame on the officers of these "cheap" Courts,—it is the practice of the Courts which I seek to get changed in this respect. Neither the bailiff nor his officer is allowed any fee for extra exertion, and we all know that unpaid agents are the worst of all servants.

I have alluded to the primary process of these Courts; but to show you more fully the advantage a solicitor derives from having the conducting of the process in his own hands, I will relate what took place in the same suit after getting the final judgment of the Court. A *fi. fa.* issued, and was placed in the hands of the bailiff's officer, who went to defendant's house, and finding on the door being partly opened that the chain inside was up, walked away, and told me he could not get in, no stratagem used, no endeavour of any kind made to get into the house, besides going to the front door and boldly knocking. I told the officer that was not the way to do business of this nature, and desired him to meet me the next day and I would see what I could do. Accordingly we met in the neighbourhood of the defendant's house, I knocked at the door, was admitted, and of course the officer followed instantaneously. This statement clearly shows, that if the process were entrusted to the keeping of the suitor, or at least put under his control to some extent, much of the inconvenience, delay, and expense attending the prosecution of suits in these Courts would be avoided. The length of this article precludes me at present going into the subject of grievous expenses entailed upon the suitors, which are wholly disproportioned to the benefits confessedly bestowed.

T. W. H.

REPEAL OF CERTIFICATE DUTY.

THE time approaches for bringing in the bill for the Repeal of the Certificate Duty, which has been fixed for Tuesday, the 30th inst.

We observe that the profession in Scotland is coming forward to support the measure,—a petition has arrived from Aberdeen.

The following is a list of the further petitions presented from the country:—

| | |
|-----------|--------------------|
| Cambridge | Helston |
| Coleford | Kingsbridge |
| Derby | Wotton-under-Edge. |
| Dursley | |

The petition from the attorneys and solicitors of London, agreed to at the general meeting of 22nd March, is in the hands of Lord Robert Grosvenor, and will be presented either before or at the time of the motion for leave to bring in a bill.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

To the Editor of the Legal Observer.

SIR,—I observe that the Editor of the *Legal Times*, notwithstanding your conclusive evidence to the contrary, still maintains his opinion that the Provincial Solicitors are not duly appreciated in London, and that the Incorporated Law Society attends only to the interests of the London profession. He advises a union of the country solicitors, and insists, that an Association of town and country members will practically, as to three-fourths of the influence, be only another London society. The following is abstracted from his leading article of last Saturday:—

"We proposed the formation of a distinct Association of the Provincial Attorneys, being satisfied that, in the first place, the interests of town and country were not always identical; 2ndly, that the London Profession had already an efficient representative in the Law Institution; 3rdly, that to have another society, combined of both, would be to give to the attorneys in the country only one-fourth of the associated influence, instead of one-half, to which they are entitled; 4thly, because any society in which they were conjoined must, from the distant position of the country members, *practically* become a London Society, directed by London, and thus, of course, neutralising the very objects for which the association of the provinces was required; 5thly, because two distinct bodies, representing two distinct interests, acting as allies, each in its own sphere, would be more powerful for every purpose than a society which nominally combined both, but in which one must be predominant, and that one already represented by another institution."

Your readers must be surprised at the assertion made in the same paper, that the *Legal Observer* endeavoured to prevent the formation of the new society. Your readers well know that from the first you encouraged the association on the express ground that a union of

town and country solicitors was essential to secure the interests of the profession in general,—which union the Law Times still opposes. The Editor professes to support the association, yet contends it will do little service for his friends in the country, who ought to unite independently amongst themselves.

M. C.

TRINITY TERM EXAMINATION.

The number of Candidates for the ensuing Term, is considerably less than the last. The persons who have given notice of admission are 188, but 66 of these have already been examined, and the actual number will probably be less than 100.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1848.

[Concluded from our last Number, p. 30, *ante*.]

Queen's Bench.

Clerks' Names and Residence.

To whom Articled, Assigned, &c.

| | |
|---|---|
| Hooper, Samuel, 7, Spencer-street, Northampton-square; The Rise of the Hill, Richmond | N. Hooper, Pump-court, Temple. |
| Hall, Laurence Robert, 8, Marlborough-place, St. John's Wood; and Bramcote | J. Fox, Nottingham |
| Hearn, Thomas Bayley, Ryde | W. Hearn, Carisbrooke, Isle of Wight; J. H. Hearn, Newport |
| Holmes, William, 8, Harleyford-street, Kennington | J. Holmes, Bocking J. Goren, South Molton-street |
| Jones, Richard Beavan, 5, Arundel-street, Strand; Llanelly; and Strand | B. Jones, Llanelly |
| King, Alfred Hassall, 10, Lyon's-inn, Strand | Alfred King, Paper-buildings, Temple; Wm B. Russell, Paper-buildings, Temple |
| Kennett, Joseph Webb Pilcher, Tottonham; and Dover | Matthew Kennett, Dover |
| Kidd, Robert, jun., 27, Lamb's-conduit-street; and North Shields | Henry Ingledew, Newcastle-upon-Tyne |
| King, Samuel Leyson Wickens, 22, Wilmington-square | Samuel King, 22, Wilmington-square; Furnival's inn |
| Ley, Robert, 7, Wakefield-street, Regent's-square; and Ratcliffe Culey | John Thomas Pilgrim, Atherstone |
| Lloyd, James Hogson, 36, Rotherfield-street, Islington | Charles Ford, Bloomsbury-square |
| Luard, William Charles, Croydon | John M. Feesdale, Fenchurch-street ³ |
| Leife, Octavius, 5, Cumberland-terrace, Lloyd-square; Richmond; and Judd-street | G. L. Fielding, Richmond, Thomas Waiker, Furnival's-inn |
| Lloyd, Hugh, 57, Hatfield-street,*Stamford-street, Blackfriars; and Trallwyn | Peter Wright, Paper-buildings C. S. Fallowdown, Paper-buildings C. Attwaters, Paper-buildings A. King, Paper-buildings |
| Longman, William Churchill, 8, Westbourne-place, Eaton-square | Gilbert Stephens, Northumberland-street |
| Levy, Edward Lawrence, 17, Norfolk-street, Strand | Charles Lewis, 9, Grosvenor-street |
| Low, Thomas Frederick, 2, Store-street, Bedford-square; and Warrington | Wm. Beamont, Warrington |
| Lloyd, John, jun., 21, Earl's-terrace, Kensington | Charles Henry Stedman, Guildhall-chambers, |
| Laes, Frederick Crowe, 18, Suffolk-place, Hackney-road; and Burstlem | William Harding, Burslem |
| Loaden, George, 28, Bedford-place | William Loaden, Bedford-place |
| Ley, William Merriman, Bishops Stortford | John Baron Bowker, Bishops Stortford |
| Lucas, Colston, 3, Fig-tree-court, Temple; Long Ashton | Henry Abbott, Bristol. |
| Motteram, John Philip, Birmingham | James Motteram, Birmingham William G. Kell, Southampton-street James Motteram, Birmingham G. E. Marsden, Manchester |
| Mears, St. John John, Bagshot; and Diddington-place, Pentonville | John Mears, Bagshot |
| Marcon, Andrew, 4, Stafford-place, Pimlico; and Bath | Robert Cruttwell, Bath |
| Mellor, James William, 26, Edmund-place, Aldersgate-street; Ashton-under-Lyne | James Mellor, Ashton-under-Lyne |
| Meadows, John Osmond, 25, White-lion-street, Islington; and Glastonbury | Robert James, Glastonbury George Mathias, Glastonbury |
| Moon, Joseph Dobson, 11, Soley-terrace, Pentonville; and Sunderland | R. Brown, Sunderland |

| | |
|---|---|
| Noble, Thomas Shepherd, York ; 1, Everet-street | Henry Anderson, York Charles Lever, 10, King's-road |
| Nunn, John, Manchester; and Rochdale | Phillip Vaughan, Brecon Joseph Blunt, jun., 3, Winchester-buildings |
| Newbould, John, 10, Great Coram-street, Southampton-row | Samuel Walker, 29, Lincoln's-inn-fields |
| Perkins, Richard Wicksted, Warrington | Joseph Wagsraffe, Warrington |
| Pritchard, Henry Devereux, 6, College of Advocates, Doctors' Commons | G. A. Kilgour, Upper Hamilton-terrace |
| Poore, Philip Henry, 29, Alfred-street, Bedford-square; and Andover | William Everett, Andover |
| Pickering, Arthur Proctor, Clapham | Edward Rowland Pickering, Stone-buildings |
| Palmby, Francis Danby, Uttoxeter | Paul Waite, Uttoxeter F. Blagg, Uttoxeter |
| Pierce, Walter, 23, Wharton-street, Pentonville | Edward Bryant Garey, Southampton-buildings Palgrave Simpson, Bedford-row |
| Parker, James William, Louth | Frederick Lucas, Louth |
| Parkes, Francis Josiah, 3, Upper Seymour-street, Portman-square | Thomas William Parkes, Verulam-buildings C. Austin Brookfield, Bedford-row C. Rich. Tverman, Gresham-street |
| Parker, Robert, jun., Greenwich | Christopher Parker, Greenwich |
| Phippard, William, 1, Regent's-place, East, Regent-square; Wareham; Everett-street | Thomas Phippard, Wareham |
| Penny, Arthur Edmund, 4, Lincoln's-inn-fields | Richard Barker, Chester Charles Wilson, Bedford-row |
| Partridge, George Anthony, 3, Verulam-buildings; Lynn; Mill-street, Hanover-square | Robert William Parmeter, Aylsham Charles Goodwin, Lynn |
| *Prescott, George William, 33, Charlotte-street, Islington | Thomas Mortimer Cleobury, 30½, Sackville-street, Piccadilly |
| Reece, Richard, 6, North-place, Gray's-inn-road, and Ledbury | William Reece, Ledbury |
| Rodwell, Henry Blyth, 63, St. Andrew's-road, Upper Norton-street; and Camberwell | Edward Norton, Diss John Day, Margaret-street Frederick Brown, Margaret-street |
| Randall, Edward Brodribb, 29, University-street, St. Pancras; Shirley | James C. Sharp, Southampton |
| Reed, William, 43, Noel-street, Islington; Graysmore; Wells street; Downham-market | Thomas L. Reed, Downham-market |
| Rogers, Hender, 35, Sidmouth-street, Regent's-square; the Rectory, Camborne | William Hockin, Truro |
| Royle, Thomas Vernon, 22, Grove-end-road, St. John's-wood; Manchester | Edward Allen, Manchester |
| Rowley, Law Pemberton, 14, Alfred-street, Bedford-square; Edgbaston | John Rawlins, Birmingham |
| Roberts, Llewelyn Lloyd, Bangor | Arthur Troughton Roberts, Mold John Hughes, Bangor |
| Rees, Arthur Harris, 26, Chester-place, Kennington; Castle Donington | Marcus Huish, Castle Donington |
| Ray, Henry Carpenter, 61, Upper Brook-street, Iron Acton | Henry Ray, Bristol |
| Roberts, William, jun., 12, Took's-court; Newnham | William Roberts, sen., Coleford James Wintle, Newnham |
| Robinson, Charles Thomas, 2, Harcourt-buildings; 2, Prospect-place, Hampstead; New Millman-street | Octavius Robert Wilkinson, St. Neots William M. Benett, Raymond-buildings |
| Selby, John Caleb, 7, Featherstone-buildings, Holborn, Sheerness; Tavistock-place | Knowles King, Maidstone Robert Edmeades, Sheerness |
| Smith, George, 9, Tokenhouse-yard; Islington; and Salisbury | John Lush Alford, Salisbury |
| Swan, Henry, 20, Great James-street, Bedford-row; Castle Donington | Robert Swan, Lincoln |
| Stedman, Charles Edward, 13, Barge-yard-chambers, Bucklersbury; Fakenham; Helhoughton; Great Dover-street; and Baker-street | Henry Stokes, Fakenham John White, Barge-yard-chambers |
| Sawbridge, Charles, 17, Lower Park-street, Islington | John Watson, jun., Trafalgar-square John Watson, Wood-street |
| Shepherd, Arthur, 2, Atkin's-road, Clapham-park | Henry Bradley, Harcourt-buildings, Temple John Bridges, Red Lion-square |
| Simmons, Frederick George, 23, Camden-street, North, Camden Town; and Exeter-street, South, Camden Town | Henry Hall, 16, New Boswell-court |
| Skipworth, Philip George, Carlisle | Silas Saul, Carlisle |

* To be Admitted in the Common Pleas, all the others are for the Queen's Bench.

- Sykes, Thomas, 6, Hungerford-street, Strand ;
Sheffield
- Sheffield, William, Mare-street, Hackney
- Shepherd, John Bullen, Coalbournbrooke, near
Stourbridge ; 25, Barnsbury-row, Islington
- Shepherd, George, Upper George-street, Portman-
square ; Beverley
- Spickett, Edward Colnett, 39, Torrington-square ;
Bridgend
- Shuttleworth, Fauconberg, Tottenham Green
- Saunders, Thomas James Goulding, 20, Ely-place ;
West Lodge, Hammersmith
- Stuart, William, Merridale, near Wolverhampton
- Tucker, Samuel Ward, 9, Tokenhouse-yard ; and
Islington
- Townsend, Frederick, 24, Great Percy-street, Man-
chester-street ; Gray's-inn-road ; Cockermouth ;
- Truwitt, George, jun., 2, Cook's-court
- Truwitt, Charles, 2, Cook's-court
- Templer, Charles Copland, 16, George-street,
Greenwich ; Bridport
- Townson, John, Kirkby Lonsdale
- Warner, William Harding, 7, Milman-street,
Bedford-row ; Clayton ; and Clapham
- Watts, Peter Robert, 13, St. Paul's-terrace, Cam-
den New Town ; and St. Briavel's
- Waddilove, Edward, jun., 59, Montague-square ;
and Leamington Priors
- Wood, Richard, York
- Wilson, Thomas, 216, Maida Hill ; and Preston
- George Mathewman Jervis, Sheffield
- Isaac Sheffield, 68, Old Broad-street
- William Hunt, jun., Stourbridge
- John Harward, Stourbridge
- Henry John Shepherd, Beverley
- William Lewis, Bridgend
- George Augustus Crowder, 57, Coleman-street
- Thomas Saunders, Guildhall
- William Clark, Wolverhampton
- Frederick Sparrow, Wolverhampton
- P. M. Chitty, Shaftesbury
- William Price Pinchard, Taunton
- John Steel, Cockermouth
- George Truwitt, Cook's-court
- George Truwitt, Cook's-court
- James Templer, Bridport
- Thomas Eastham, Kirkby Lonsdale
- Henry James Harvey, Bath
- George Dawes, Angel-court, Throgmorton-street
- F. T. Bircham, Bedford-row
- John Bass Hanbury, Leamington Priors
- John Wood, York
- Joseph B. Dickson, Preston
- Thomas Wright Nelson, Gresham-place, Lon-
bard-street
- Brooke Smith, Bristol
- Thomas Ward, York
- Henry Pearson, York
- William Dines, 20, Pall Mall
- Charles Addis, 10, Great Queen-street, Westminster

Notice of Admission for Trinity Term, to be added to the List pursuant to Judges' Order.

- Brown, John George, 22, Edward-street, Hamp-
stead-road ; Belgrave-street, south ; Eccle-
stone-street, south ; Shaftesbury-terrace, Pim-
lico ; and Chelsea
- Clarke, Samuel Thomas, 52, Tavistock-square
- Dunn, Henry Bidwell, Pembroke terrace, Ken-
sington
- Hayward, Charles Edwards, 40, Bernard-street,
Russell-square ; Holland-place, Kensington ;
Euston-place ; Brow Fort ; and Winchester
- Jones, Charles Edward, 34, Alfred-place west,
Brompton ; Camden-road Villas
- Lyne, Thomas, Woodhouse, near Whitehaven ;
and Spring-place, Bagnigge-road
- Pattinson, Thomas, Retreat, Haverstock-hill,
Hampstead-road ; and Kirkby Stephen
- Taylor, Richard James, 35, Poultry ; and Dorston-
house
- Terry, William, 5, Great Ormond-street ; and
Northampton
- Torr, Joseph Hooley, 15, Ampton-place, Gray's-
inn-road ; Witheridge ; 2, Old-square, Lin-
coln's-inn ; Nicholas-lane
- Turner, Frederic Foote, 18, Craven-street, Strand ;
and Langport
- Whatley, George, 8, Lowther-cottages, Holloway
- Warry, John, 38, Upper Berkeley-street, Port-
man-square
- Windsor, William, 17, Sidmouth-street, Regent's-
square ; and Birmingham
- J. Brown, Newcastle-upon-Tyne
- Henry J. Jones, Church-court, Clement's-lane
- William Drake, East Dereham
- J. Turnley, Walbroke-house
- Messrs. Todd and Waters, Winchester
- Williams and M. Leod, Temple
- J. A. Young, St. Mildred's-court
- W. J. Lyne, Whitehaven
- Samuel Brabner, Liverpool
- M. Hewitson, Kirkby Stephen
- E. Pritchard, Hereford
- J. Robinson, Queen-street-place
- Thomas Scriven, Northampton
- William Comins, Witheridge
- N. Broadmead, Langport
- G. L. Whatley, Mitchel Dean
- G. Becke, Lincoln's-inn-fields
- Charles Henry Radcliffe, Salisbury
- S. Danks, Birmingham

NOTES OF THE WEEK.

RECENT APPOINTMENT.

H. WADDINGTON, Esq., of the Midland Circuit, has been appointed Under Secretary of State to the Home Department, in the place of Samuel March Phillips, Esq., who has resigned. Mr. Waddington was called to the Bar in June,

1825, and fills the office of Recorder of Warwick and Lichfield. By his promotion, the more profitable and responsible office, known in the profession as "the Attorney-General's Devil," also becomes vacant. Mr. Waddington has filled this situation since the elevation of Mr. Justice Wightman to the Bench, during Sir John, now Lord, Campbell's Attorney-Generalship.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Arrowsmith v. Hill. May 4, 1848.

RECOVERY OF DAMAGES FOR DETENTION IN PRISON ON ABANDONED WRIT OF ATTACHMENT.

Unless both parties consent, the Court will not grant a reference to the Master to assess the damages sustained by defendant by reason of detention in custody, under an abandoned writ of attachment issued by the plaintiff. An action at law is the proper remedy.

Mr. Swanston, with whom was Mr. Tripp, stated, that this was a motion of appeal from an order of the Vice-Chancellor Knight Bruce, directing a reference to the Master to inquire and report what damages, if any, the defendant had sustained, by reason of his detention in custody, under the following circumstances. The defendant being in contempt for want of answer, the plaintiff issued in December, 1846, the usual writ of attachment, and lodged it with the sheriff. Previously to this writ being executed, the defendant put in his answer, and the plaintiff excepted to it. The defendant was subsequently, (in September, 1847), taken in execution under a writ of *ca. sa.* unconnected with the suit, and having given the usual bail-bond on that writ, claimed his discharge from custody. The officer of the sheriff, however, the writ of attachment being still in the office, detained the defendant until the latter had also procured sureties, and entered into a bail-bond in respect of that writ. The defendant was in consequence kept longer in custody for the space of about two hours and a half. Upon motion by the defendant for the delivery up of the last-mentioned bail-bond and the repayment of his costs and expenses in respect of it, the Vice-Chancellor had made the order which was now appealed against. The learned counsel submitted, that these proceedings were unknown to the plaintiff, and were the acts of the sheriff's officers, and that there was no precedent to justify such an order, where the alleged wrong-doer wished for an action at law.

Mr. James Russell and Mr. W. T. S. Daniel, in support of the order urged, that the plaintiff ought to have informed the sheriff that the writ of attachment was no longer to be acted upon, and it would then have been duly returned to the Record and Writ Clerks' Office. The question was, whether the leaving of the writ in the office of the sheriff after it had become inoperative, was such an undue process of the

Court as to give the Court jurisdiction in respect of any wrong attributable thereto.

The Lord Chancellor, without calling for a reply, said, it was admitted on both sides that process under the writ of attachment had become inoperative, and it was clear that the sheriff had improperly detained the defendant. The latter came here for relief, and it was quite true, as a general rule, that this Court would administer such relief, and not allow an action to be brought in respect of any abuse of the practice issuing out of its own practice. In this case the plaintiff was doubtful whether he ought to have given notice to the sheriff to return the writ, and he was willing that the defendant should bring an action at law against him in respect of it. The order of the Vice-Chancellor must be discharged, with liberty for the defendant to bring such action as he should be advised. Costs of the motion to be reserved until such action should be brought, and if not brought within a limited time, costs of the motion before his Honour to be given to the plaintiff.

Rolls Court.

Fussell v. Sauger. Feb. 9, 1848.

PAYMENT INTO COURT.—TRUST FUND.

The Court refused to make an order against four trustees to pay into Court a trust fund admitted by the answer to have been at one time in their joint possession, but stated to have been many years since received by one of them only, though it appeared to have been applied by him in a way which amounted to a breach of trust.

This was a motion for the payment into Court of two sums of 900*l.* and 119*l.* 11*s.* 2*d.*, under the following circumstances:—The suit was instituted for the administration of the estate of a Mr. Richard Sauger, who died in 1819, and left his property to four trustees,—Messrs. F. Edwards, J. B. Sauger, B. Sauger, and R. Brooks. His property comprised a sum of 1,500*l.* and the reversion of a sum of 400*l.* which fell in in the year 1827. The first sum was received by Mr. Brooks, and invested by him in the 4 per cents. in the names of all four trustees. When the 4 per cents. were converted into 3½ per cents., the money was again received by Mr. Brooks, and lent in the names of the two Messrs. Sauger, to a Mr. Barrett on the security of a life interest and a policy of insurance. Mr. Barrett died in 1834, when the money lent on mortgage had been received by Mr. J. B. Sauger, by whom part had been paid over to the residuary legatees of

Mr. Richard Sauger, and the remainder, constituting the 900*l.* before mentioned, had been dealt with in a manner by which it appeared to have been lost. The 400*l.* was also received when it became due by Mr. Brooks, and invested in the names of all four trustees, by whom it had been distributed among the residuary legatees, with the exception of the 119*l.* 11*s.*

The trustees submitted to bring the last sum into Court, but in respect to the 900*l.*, contended that the Court ought not to make an order against all the four trustees upon an answer which admitted the possession of the money by one only. The question was not now of the ultimate liability, but of the liability of the trustees upon the answer.

On the other side it was contended that the admission of the fund having been at one time in the power of all the trustees created a liability in them all, which could be removed only by showing that it had been subsequently properly invested.

Mr. Turner and Mr. Batten for the motion. Mr. Kindersley and Mr. Gordon contra.

The cases of *Bourne v. Mole*, 8 Beav. 171 and *Myer v. Moutrion*, 5 Beav. 146, were referred to.

Lord Langdale said, the question on a motion like the present was, whether he could find an admission either that the party had the money, or having had it, had placed it out of his hands by some simple operation, so that it might easily be recovered. But the inference of liability in this case came from a long deduction of facts, and he thought that the case did not fall within the rule recognised by the Court. He must therefore refuse the motion, except as to the 119*l.* 11*s.*

Vice-Chancellor of England.

Winter v. Vizetelli. April 27, 1848.

SUBMISSION OF DEFENDANT TO PLAINTIFF'S DEMAND.—INTERLOCUTORY APPLICATION.—COSTS OF SUIT.

Where a bill had been filed, and the defendant thereupon submitted to the demand of the plaintiff; on an application by the plaintiff that the costs of the suit might be taxed and paid by the defendant, without any further proceeding in the cause being taken, order made accordingly.

ON the 7th October, 1847, the plaintiff filed a bill against the defendant to compel the performance of an agreement for a lease. On the 20th of March, 1848, before any further proceedings whatever had been taken in the suit, the defendant accepted the lease and executed a counterpart, at the same time agreeing to pay a certain sum by instalments, such sum being the amount of a quarter's rent, the value of certain fixtures, and the costs of the suit, and also agreeing to give to the plaintiff a promissory note for the amount. Defendant did not pay the first instalment at the time mentioned, nor give his promissory note, whereupon, on the 15th of April, plaintiff served him with a notice of motion to the effect that he might be ordered to pay to the plaintiff forthwith plain-

tiff's costs of the suit to be taxed by the Master.

Mr. J. J. Jervis appeared on the motion for the plaintiff, and suggested that although the regular mode for the plaintiff to recover costs would be to have the suit conducted through its various stages and then have the costs taxed in the ordinary way, yet that course of proceeding would only burden the defendant with additional and unnecessary expense, and that as the object of the suit had been obtained, the Court might now, on the affidavit of plaintiff's solicitor, order the costs to be taxed and paid. He cited as an authority for this position the observations of the Master of the Rolls in *Sicell v. Abraham*, 8 Beav. 598. The defendant did not appear.

The Vice-Chancellor made the order according to the notice of motion, observing that he considered it a very reasonable and proper application under the circumstances.

Vice-Chancellor Knight Bruce.

St. John v. Gibson. Dec. 23, 1847.

CONSTRUCTION OF TRUST.

a settlement, trusts of stock were declared to be for several persons male and female equally, and as to each female, her share to be retained, and the income paid to her for her life for her separate use, and after her death upon trust for such person as she should by will appoint, and in default, for the executors or administrators, or other the personal representative or representatives of such female absolutely: Held, that each female was entitled to an absolute interest in her share, and to a transfer of the same.

By a settlement dated February 10th, 1830, the trusts of a sum of 5,000*l.* stock, which had been transferred into the names of certain trustees, were declared to be for Harriett Gibson, Ann Gibson, Isabella Gibson, Henry Gibson, Thomas Gibson, Edward Gibson, and Serena Gibson, or such of them as should live to attain the age of 21 years equally. In the settlement was contained a proviso declaring that, as to the shares of such of the said persons before-named as were females, the capital of such share or shares should not be paid over or transferred to them absolutely on their attaining the age of 21 years, but should be retained by the trustees or trustee for the time being, and continue to be invested in the same stock, or invested in other stock at their discretion, upon trust, as to each of the said females, to pay the dividends, interest, and annual proceeds of her share of the said trust funds as the same should be received after the attainment by such female of the age of 21 years, into the proper hands of such female for her sole and separate use during her life. And it was declared that from and after the decease of each such female, then upon trust, as to the principal of such share or shares, and all dividends and interest then due and payable thereon, for such person or persons as she should by her last will and testament appoint,

and in default of such appointment, for the executors or administrators, or other the personal representative or representatives of such female, absolutely.

On the marriage of one of the female *cestui que trusts* with Mr. St. John, her share of the stock was transferred into the names of trustees, the defendants in the suit; and by an indenture dated April 19th, 1841, it was declared that they should be possessed thereof in trust for Mrs. St. John for life, and then for the children of the marriage; and it was declared, that if Mrs. St. John should survive her husband, and there should be no children of the marriage, the defendants should stand possessed of the stock upon such trusts as Mrs. St. John should by deed or will appoint.

Mrs. St. John survived her husband, and there were no children of the marriage. Mrs. St. John by deed appointed the fund to herself, and called upon the defendants for a transfer. The defendants declined to make the transfer on the ground that it was doubtful whether, by reason of the expression "executors or administrators, or other the personal representative," in the deed of the 10th of February, 1836, Mrs. St. John had an absolute interest in the stock. The bill was therefore filed by her against them, praying a transfer to her of the fund.

Mr. Russell and Mr. Simpson for the plaintiffs.

Mr. Swanston and Mr. Heallam, for the defendants, submitted whether the plaintiff was entitled to a transfer under the words of the original settlement.

His Honour said, that he thought that the plaintiff, under the original settlement and the other circumstances stated, had acquired an absolute interest, and was entitled to the transfer.

Queen's Bench.

(Before the Four Judges.)

Wilding v. Temperley. Easter Term, 1848.
AFFIDAVIT OF DEBT UNDER 5 & 6 VICT. C. 122.—COSTS OF SUIT.

A plaintiff making an affidavit of debt under the 5 & 6 Vict. c. 122, should claim what remains due to him after giving credit for what is due from him to the defendant. Where a plaintiff erroneously made an affidavit of debt claiming 10l. more than was really due, but the mistake was explained by the particulars of demand annexed to the affidavit, the Court refused to allow the defendant his costs of suit under the 19th section of the act.

A RULE nisi had been obtained in this case on the part of the defendant, calling on the plaintiff to show cause why he should not pay certain costs under the 5 & 6 Vict. c. 122, "An Act for the Relief of Insolvent Debtors," which, by section 19, enacts, "that in every action brought after the commencement of this act, wherein any such creditor is plaintiff and any such trader is defendant, and wherein the plaintiff shall not recover the amount of the sum for which he shall have filed an affidavit

of debt under the provisions of this act, such defendant shall be entitled to costs of suit, to be taxed according to the custom of the Court, in which such action shall have been brought, provided that it shall be made appear to the satisfaction of the Court in which such action is brought, upon motion to be made in Court for that purpose, and upon hearing the parties by affidavit, that the plaintiff in such action had not any reasonable or probable cause for making such affidavit of debt in such amount as aforesaid, and provided such Court shall thereupon, by a rule or order of the same Court, direct that such costs shall be allowed to the defendant."

The plaintiff made an affidavit of debt, in which he claimed from the defendant the sum of 99l. 17s. 9d., but by the particulars of demand furnished by the plaintiff and annexed to the affidavit, it appeared that the original debt was 100l. 15s., and he then gave credit to the defendant for 10l. 17s. 3d. The verdict was ultimately given for the sum of 89l.

Mr. Serjeant Shee now showed cause. The provisions of the act of parliament do not apply to the present case, where the error committed in the account has evidently arisen from mistake, and not from any improper motive on the part of the plaintiff. *Sherwood v. Taylor* was a decision on the 43 G. 3, c. 46, which directs that the defendant shall be allowed his costs when he is arrested for a larger sum than is found to be due, provided it shall appear to the Court that there was not any reasonable or probable cause for such arrest. The defendant in that case was arrested for 327l., and an arbitrator found the sum of 250l. to be due, and the Court held, that it was not a case under that act to entitle the defendant to costs for a malicious and vexatious arrest.

Mr. Butt and Mr. Maynard, in support of the rule. It is not contended that there was any malice on the part of the plaintiff, but in the terms of the statute there was not any reasonable or probable cause for making the affidavit claiming 10l. more than he knew to be due. The statute does not apply to a set-off, but the plaintiff should state on his affidavit the sum actually due to him on a balance of accounts.

Lord Denman, C. J. It is our wish to place these applications on a clear and settled principle, that we may make these applications more rare, and confine them to a particular principle on which they are to be decided. I think that we must decide that the party is bound to make an affidavit of what remains due to him after giving credit for what is due from him and stating what he gives credit for. He has done so here. He states the debt to be 99l. 17s. 9d., but he shows how that sum is made up, for he states the original debt to be 100l. 15s., and then gives credit for 10l. 17s. 3d., and says that that leaves a balance of 99l. 17s. 9d. These figures show a mere mistake in the statement of the result.

Mr. Justice Patteson. I should be sorry to

say that under this act of parliament a man is entitled to make an affidavit of a debt when he knows that a debt to that amount does not exist; but here the question whether he can do so does not arise, for here the affidavit of debt must be taken in connection with the particulars annexed to it. The plaintiff has merely committed a mistake of saying 99*l.* for 89*l.*, and the particulars show that to be the case.

Mr. Justice *Wightman* concurred.

Mr. Justice *Erle*. If the plaintiff had been indicted for perjury on this affidavit, he must have been acquitted, for his oath is, that he is entitled to 99*l.* odd, according to the account annexed. That account shows that he made a mistake in stating the result of the calculation. As there has only been this mistake, the rule ought to be discharged. It appears to me to be necessary to remark further, that there is a great distinction between an affidavit to hold to bail, and an arrest in pursuance thereof, and an affidavit in bankruptcy calling on the party to come in and answer. The latter is not the foundation of anything *per se*, but is a mere call on him to give an explanation. It is like saying that the plaintiff has a claim for 100*l.*, and that he knows the defendant has a claim for something by way of set-off, but he does not know what.

Rule discharged.

Queen's Bench Practice Court.

(Before Mr. Justice *Coleridge*.)

Doe dem. Kenrick v. Roe. May 11, 1848.

EJECTMENT.—SERVICE OF DECLARATION.

A declaration and notice in ejectment were served on the daughter of the tenant in possession, on the premises, at 10 o'clock, p. m., of the day next before the first day of Term, upon which service a rule nisi for judgment against the casual ejector was granted. On showing cause against the rule, affidavits were put in denying that the notice was read over and explained to the daughter of the tenant in possession when served on her. Held, that as the tenant in possession did not, in the affidavits used in showing cause, swear that he did not understand what the declaration and notice meant until after Term began, the service was sufficient, and the rule must be made absolute.

In this case a rule *nisi* had been obtained for judgment against the casual ejector, and the affidavit on which it was obtained stated, that the declaration and notice in ejectment had been served on the tenant in possession, by the delivery of the same to his daughter on the premises, at 10 o'clock p. m. of the day next before the first day of the present term.

Bovil now showed cause on affidavits, which denied that the notice was either read over or explained to the defendant's daughter, but which did not deny that the declaration and notice had come to the defendant's possession

on the evening it was so delivered to the daughter, nor that the defendant, the tenant, did not understand the notice. It was, however, contended, that to make the service upon the daughter a good service on the tenant, the notice must either have been read over or explained to her. It was also argued, that the service of the declaration and notice being after nine o'clock p. m., on the night before the first day of term, was too late.

Unthank, in support of the rule, contended, on the authority of *Doe dem. Downes v. Rowe*, 4 Dowl. 565, that the service was sufficient, as a rule *nisi* only had been granted, and that such rule would be made absolute, unless the tenant on showing cause swore that he did not understand the declaration and notice, or did not receive the same until after the commencement of the Term; if this were not so, there would be no distinction between the cases in which a rule *nisi*, and those in which a rule absolute in the first instance is granted, and it would be futile to grant a rule *nisi* at all, for where a rule *nisi* only is granted it is always on the ground of some defect in the service.

Coleridge, J. The Master informs me, that he is not aware of any case in which the distinction contended for has been drawn. No doubt there are many reasons why the service of a declaration and notice in ejectment should be correctly made, but I see good ground for holding this service sufficient, by treating the service of the declaration in ejectment as, in effect, the same as the service of a writ in a common action. If the tenant had sworn in the affidavits used in showing cause against the rule being made absolute, that he did not understand what the declaration and notice meant, until after the term had begun, it would have taken the case out of the authority of the case cited of *Doe dem. Downes v. Roe*. If the distinction between a rule *nisi* and a rule absolute in the first instance does not exist, it is difficult to see why a rule *nisi* should ever be granted, as it constantly is in cases where the service is defective. I am of opinion that the distinction does exist, and that this rule should be made absolute.

Rule absolute.

Court of Common Pleas.

Motley v. Webb. Easter Term, 1848.

STAMP.—ACKNOWLEDGMENT.

The acknowledgment of an accommodation acceptance of a bill of exchange, though it contain also an agreement to provide funds to meet the bill when due, is admissible in evidence without a stamp.

THIS was an action on a bill of exchange by a first indorsee against the acceptor, and at the trial before Lord Denman, at the last Maidstone Assizes, the following unstamped document was received in evidence to support the defendant's plea that the bill had been accepted for the accommodation of the drawer.

"Mr. G. Webb,—I hereby acknowledge that you have for my accommodation accepted a bill of exchange of even date herewith for 25*l.*, payable three months after date, and I agree to provide funds for the said bill when due."

The defendant had a verdict in his favour, upon that and the other evidence at the trial, and

Petersdorff now moved for a rule to show cause why that verdict should not be set aside and a new trial had, contending that the document had been improperly received in evidence without a stamp, notwithstanding the cases of *Tomkins v. Ashby*, 6 Barn. & Cres. 541, and *Mullett v. Huchison*, 7 Barn. & Cres. 639, relied upon at the trial.

Per Curiam. The legal effect of the document was simply that of an acknowledgment, and the latter words did not in any way alter the legal effect, for they expressed nothing more than the law would imply. It was quite clear, therefore, upon the authorities, that it did not require a stamp to render it admissible in evidence.

Rule refused.

Exchequer.

John Marsh v. Richard Davis, Robert Tibbott, James Davis, and William Evans, Jan. 17, 1848.

ATTORNEY'S BILL FOR PAROCHIAL BUSINESS.

A retainer by parish officers of an attorney on parish matters is not binding on them together with their successors personally.

THIS was an action for work and labour by the plaintiff as an attorney. On the 1st Dec., 1843, an order was duly made by the justices for the removal of one Hugh Hughes and family from the parish of Carno in the County of Northumberland to the parish of Llanycil: under this order, on the 13th January following, no notice of appeal having been given, the overseers of Llanycil entered and respite^d an appeal at the ensuing sessions, in April, 1844. The appeal came on for hearing at the subsequent sessions, when a preliminary objection was made that there had not been 28 days' notice. This objection the magistrates held fatal, and confirmed the order with costs. In July, 1844, an order was obtained calling on the justices to show cause why a mandamus should not issue commanding them to enter continuances and hear the appeal. Copies of this rule were served upon *Richard Davis*, who then, and from thence until and at the time of the commencement of the action was one of the churchwardens of the parish of Carno, and upon *Griffith Gittins*, then one of the overseers of the poor of the same parish. One *Enoch Morgan* was then the other overseer of the poor, and the defendant, *Robert Tibbott*, the other churchwarden. After *Griffith Gittins* had been served with a copy of a rule nisi, he called upon the plaintiff

at his office to consult him on the subject, and signed a written retainer as follows:—

"Parish of Llanycil, Appellants.

"Parish of Carno, Respondents.

"To John Marsh, Solicitor, Carno.

"We do hereby retain you as our attorney to show cause on our behalf against a rule obtained," &c.

(Signed,) "ROBERT TIBBOTT.

"ENOCH MORGAN × his mark.

"GRIFFITH GITTINS."

Tibbott shortly afterwards signed the retainer, and *Enoch Morgan*, the other overseer, put his mark. On 20th June, 1845, the defendant, *Robert Tibbott*, gave the plaintiff notice in writing counterminding such retainer, in which he expressly declared that he would not be responsible for any expenses the plaintiff might incur contrary to his directions as well as contrary to the wishes of the parishioners. *Richard Davis* was never asked to sign a retainer, and did not in any way interfere. Before the rule was obtained there was a change in the parish officers. In March, 1845, the defendants, *James Davis* and *William Evans*, were duly elected to the office of Churchwardens. Plaintiff's clerk saw *James Davis* repeatedly, who asked how the matter was going on. He also saw *William Evans* repeatedly about it, but he took no active part. *James Davis* often inquired of *Gittins* how the matter was going on in London. The rule came on for argument in Trinity Term, 1845, when it was discharged. In January, 1846, the plaintiff communicated the result to the defendant *James Davis* and to the parishioners. Subsequently, on 28th Jan., 1846, the plaintiff delivered to *James Davis* a bill of costs for these proceedings. All the defendants expressed their readiness to pay, but said there was a grudge in the parish. No bill was delivered by plaintiff to any of the other defendants. *James Davis* afterwards caused a public vestry to be held, at which it was determined to resist payment of the bill. This action was commenced in the following March. Upon this state of facts, it was at the trial contended for the defendant, that the plaintiff ought to be nonsuited; first, on the ground that the defendants were not the proper parties to be sued; secondly, that the delivery of the plaintiff's bill of costs to *James Davis* alone was not a sufficient delivery thereof under the statute 6 & 7 Vict. c. 73. A verdict was taken for the plaintiff for the amount claimed, 10*l.* 7*s.* 8*d.*, and 40*s.* costs, subject to the following special case reserved for the opinion of the Court:—

"If the Court should be of opinion that the action was properly brought against the present defendants, and that the plaintiff's bill of costs was duly delivered in compliance with the statute, the verdict on both issues for the plaintiff is to stand as entered: if the Court should be of a contrary opinion on either of the above points, then a nonsuit to be entered, or a verdict for the defendants, as the Court may direct."

Townsend, for the plaintiff, contended that the defendants were the proper parties against whom the action should be brought; and it was no objection that the defendant *Richard Davis* had never taken any part in the proceedings, for the retainer being by a majority of the parish officers, such majority bound the minority so as to render them liable to an action. No right of action had accrued against the parish officers who gave the retainer during the time that they continued in office, nor until June, 1845, when all the present defendants were in office. But then it would be said that the ex-overseers who retained the plaintiff had no power to bind their successors. This he was ready to admit; but the successors might adopt the acts of their predecessors, and thus take upon themselves their liability in respect of those acts, and a very little would be construed to be sufficient to create this liability. There was evidence that the defendants had knowledge of, and had assented to, those acts of their predecessors in office, and by such assent they had adopted those acts as their own. As in the case where an agent does an act without authority, if the principal subsequently affirms the act, he is liable. *R. v. Beeston*, 3 T. R. 592; *Kirby v. Bamister*, 5 B. & Ad. 1069; *Malkin v. Vickerstaff*, 3 B. & Ald. 89; *Rew v. Pettel*, 1 Ad. & E. 196; *McCleau v. Dunn*, 4 Bing. 722, per Best, C. J.; *R. v. Miller*, 6 T. R. 268.

Welsby, for the defendants, was not called upon.

Per Curiam. The cases which have been cited, when properly considered, will be found to press against the plaintiff rather than in his favour. The contracting parties might make a contract, to bind the parish funds, but not to bind all these parties personally. They cannot be regarded as partners in trade. It must appear that all four defendants are liable upon a personal retainer; if the argument is, that they only meant to contract on the part of the parish, then no party is personally liable. Knowledge and assent will not make them liable; that is not sufficient. Nor can it be said that a man employs another as his attorney from the fact that if the attorney recovers in an action against him, he may repay himself out of the parish funds.

Rule absolute for a nonsuit.

Court of Bankruptcy.

In re Delany. May 9, 1848.

NOTICE TO DISPUTE ADJUDICATION.—
WHEN TOO LATE.—PRACTICE.

A notice to dispute an adjudication served upon the petitioning creditor's solicitor the day before that appointed for showing cause against the adjudication, is too late.

Even when the bankrupt has been served with a copy of the adjudication in Ireland, he is bound by the rule of court to give two days'

notice of his intention to dispute the adjudication.

THE bankrupt had given notice, under the 5 & 6 Vict. c. 122, s. 23, to show cause this day against the validity of the adjudication, upon a fiat issued against him as a trader carrying on business in the city of London.

Mr. *H. S. Wilde*, on behalf of the petitioning creditor, took a preliminary objection to the sufficiency of the notice to dispute the adjudication. The notice to dispute was served on the registrar, and on the solicitor for the petitioning creditor, in the afternoon of Monday, May the 8th, to show cause at the sitting of the Court on this day, (the 9th May). By rule 13 of the General Rules and Orders, dated Nov. 12, 1842, it was laid down that, "if any person adjudged bankrupt intend to dispute such adjudication, such person shall cause notice of his intention so to do to be served upon the petitioning creditor or his solicitor, and the deputy registrar of the Court, two days at least before the day of showing cause against such adjudication." The rule was framed without exception or qualification, and as the bankrupt had not complied with it by giving two days' notice of his intention to dispute the adjudication, it was submitted he had no right to be heard.

The fact that the notice to dispute was only served about three o'clock in the afternoon of the previous day, was proved by the clerk of the bankrupt's solicitor.

Mr. *Duncan*, for the bankrupt, admitted that the service was not a compliance with the rule cited, which required two days' notice at the least; but he contended the notice was sufficient under the circumstances. The bankrupt was served with a duplicate copy of the adjudication at Sligo, in Ireland, on Wednesday the 3rd May. He hastened with all convenient speed to London, but it was impossible for him to get the notice prepared and served at an earlier period than he had done. The statute 5 & 6 Vict. c. 122, s. 23 only gave the bankrupt five days to dispute the adjudication, and although a trader resident in London might give a two days' notice within the five, it was impossible for a trader served with a notice in the West of Ireland to comply with the rule of Court.

Mr. Commissioner *Holroyd* said, that if the objection was persisted in, he should feel himself bound to give effect to the rule of Court. It might operate inconveniently in this particular case, but the terms of the rule admitted of no doubt.

Mr. *Duncan* inquired, if the facts he had stated were verified by affidavit, which the bankrupt was prepared to do, whether they would influence the Commissioner's decision.

Mr. Commissioner *Holroyd*. I should feel bound to adhere to the rule. The notice to dispute has been served too late, and it follows, the objection being taken, that the bankrupt cannot be allowed in this Court to dispute the adjudication.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

CONSTRUCTION OF STATUTES.

[For the previous Sections of this Series of the Digest in the present Volume, See Law of Attorneys, p. 18. Law of Wills, p. 37.]

ALIEN.

Heir at Law.—British subjects settling in the United States since their independence.—Abjuration of the realm.—Stats. 3 Jac. 1, c. 4, ss. 22, 23; 4 G. 2, c. 21, s. 2; 13 G. 3, c. 21; 4 G. 2, c. 21. *A.*, who was by birth an Englishman, emigrated to the United States of America after the recognition of their independence by the treaty of 1783, and took the oaths of obedience to the American government, and of abjuration of all other allegiance,—married an American woman, and had a son of that marriage (*B.*) born in the United States. *B.* had a son (*C.*), who was also born in America, out of the Queen's dominion: *Held*, that *C.* was capable of inheriting real estate as a British subject within the stats. 13 G. 3, c. 21, and 4 G. 2, c. 21.

The abjuration by a British subject of his allegiance to the Crown, and his promise of obedience to a foreign state, although it might have rendered him liable, under the statute 3 Jas. 1, c. 4, ss. 22, 23, to the penalty of high treason, does not therefore disqualify the children of such British subject from inheriting, in the absence of any attainder of such British subject by judgment, outlawry, or otherwise.

The exclusion from the benefits of the stat. 4 G. 2, c. 21, s. 2, of the children of fathers who, at the time of their birth, were liable to the penalties of high treason or felony in case of the returning into this kingdom or Ireland without the Royal license, is not to be construed as requiring the Court to determine incidentally, and in the absence of the party charged, that he has been guilty of high treason or felony; but the exclusion must be construed, as restricted to that class of offences in which the penalty is annexed to the fact of returning without license.

The privileges which the stats. 4 G. 2, c. 21, and 13 G. 3, c. 21, confer, are the privileges of the children, and not of the father; and, therefore, acts intended by a British born subject to have the effect of acts of abandonment or abjuration of his rights in that character, do not deprive his children of the benefit of the stats. 4 G. 2, c. 21, and 13 G. 3, c. 21, unless such acts bring them within the disqualifying provisions of those statutes.

A person claiming the benefit of the stat. 13 G. 3, c. 21, does not lose that benefit only because he does not conform or qualify in the manner prescribed by sect. 3 of that statute within five years from the accruer of his right or interest. *Fitch v. Weber*, 6 Hare, 51.

Case cited in the judgment: *Doe d. Achmuty v. Mulcaster*, 5 B. & C. 771.

BOND.

See Usury.

BUILDING SOCIETY.

Purchasing members.—*Redemption.*—*Liability of future subscription.*—The plaintiff became a member of, and purchased twelve and a half shares in a building society, constituted under the stat. 6 & 7 W. 4, c. 32, and the society advanced a sum of 750*l.* in respect of such shares, upon a conveyance of certain property to the trustees of the society, by way of mortgage. According to the rules of the society, 10*s.* per month subscription, and 4*s.* per month redemption moneys, were payable on each share, until a sum of 120*l.* per share should be realized for the non-purchasing members. On a bill against the trustees for redemption: *Held*, that upon the terms of the mortgage-deed and the rules of the society, the plaintiff was entitled to redeem only upon payment of all the future subscriptions on his shares until the dissolution of the society, the probable dissolution of the society to be ascertained by calculation, and the future payments to be treated as if immediately due. *Mosley v. Baker*, 6 Hare, 87.

CONSERVANCY COMMISSIONERS.

Under an act of parliament by which the conservators of river banks were empowered to apply the funds under their control (which were raised by a rate upon the proprietors of adjacent lands) "in doing, constructing, and executing all such works, acts, matters, and things as they should from time to time deem necessary, proper, or expedient, for putting the banks into and maintaining the same in a permanent state of stability." *Held*, that they were authorized to apply a portion of the fund in watching and, if necessary, opposing a bill in parliament for a project lower down the river which was likely to be injurious to the banks under their superintendence. *Bright v. North*, 2 Phill. 216.

COPYRIGHT.

1. The copyright of an article written for the Encyclopædia Metropolitana, and paid for without more; belongs to the author of the article, and an injunction granted to restrain the proprietors of the Encyclopædia from proceeding to publish the article in a separate form. *The Bishop of Hereford v. Griffin*, 35 L. O. 342.

2. *Musical compositions.*—The copyright in musical compositions is more extensively protected than the copyright in dramatic pieces. *Russell v. Smith*, 15 Sim. 181.

EVIDENCE.

Lord Denman's Act.—*Co-defendant in same interest.*—Where there are two defendants who have exactly the same defence, the 6 & 7 Vict. c. 85, does not render the evidences of one admissible in favour of the other. *Monday v. Guyer*, 1 De G. & S. 182.

INFANT.

1. 11 Geo. 4, and 1 W. 4, c. 47.—Convey-

ance by infant ordered, without reference to the Master. *Coombe v. Chapman*, 34 L. O. 421.

2. A petition under Sir E. Sugden's Act, (1 W. 4, c. 65,) for payment of dividends belonging to an infant, ought to be the petition of the guardian solely, and confined to the object of payment merely. The bank having refused to obey an order granted upon a petition seeking payment, and also, the appointment of a proposed guardian, the Court thought the objection valid. *Re Pongerardo*, 34 L. O. 359.

LAND CLAUSES CONSOLIDATION.

1. *Time for umpire making award.*—The three months allowed by 8 Vict. c. 18, s. 23, to "the arbitrators or their umpire" for making their award, is not one and the same period, but the umpire has a new period of three months for making his award, from the time when the arbitration devolves upon him. *Skerratt v. North Staffordshire Railway Co.* 2 Phill. 475.

2. *Municipal corporation.—Trusts of borough property.*—All the lands of a municipal corporation are held "upon the same or the like uses, trusts, or purposes," within the sect. 69 of the Land Clauses' Consolidation Act, (8 Vict. c. 18,) so that money paid for the compulsory purchase of one part of the land of a municipal corporation may be applied in the redemption of an incumbrance upon another part of the lands of the same corporation. *Ex parte Corporation of Cambridge, in re Eastern Counties Railway Company*, 6 Hare, 30.

3. 8 Vict. c. 18.—A railway company giving notice of its intention to take lands under the 18th section, cannot enter upon part and give security for that part only under the 85th section, but must deposit the price or give security for the whole before such entry.

The bond must be given with two sureties, notwithstanding that the company is incorporated.

The company must clearly and satisfactorily show that they have complied with the requisitions and fulfilled the conditions of the 85th section, before they can enforce it against a landed proprietor. *Baker v. The North Staffordshire Railway Company*, 35 L. O. 590.

4. *Payment out of Court.—Aliquot share.*—On an application to obtain out of Court an aliquot share of the purchase-money of land taken by a railway company, paid into Court by the company under the Lands Clauses Consolidation Act, it is not necessary to bring before the Court the parties entitled to the rest of the fund. *Re Midland Railway Company*, 35 L. O. 143.

LIMITATIONS, STATUTE OF.

1. *Liability of partner for fraud of co-partner.*—A. and B., having for many years been partners in business as solicitors, dissolved their partnership in 1834, and the business continued to be carried on by A. alone until 1842, when he became bankrupt, and it was then discovered that a sum of money which had been paid by a client into the joint account of the firm, at their banker's, in 1829, for the purpose of investment, and which A. had

shortly afterwards represented to have been invested accordingly, and on which he had regularly paid interest on that footing, had, instead of being invested, been appropriated by him to his own use. Upon a bill filed by the client against B. to make him liable for the money,

Held, 1st, that even assuming the defendant to have been (as he alleged he was) personally ignorant of the whole transaction, and to have derived no benefit from the fraud, still he was bound by the representation of his partner; such representation relating to a matter within the limits of the partnership business, and amounting therefore to a guarantee by the firm to the parties concerned, that they should be placed in the same situation as if the facts represented were true.

2ndly, That although the plaintiff might have a right of action at law for the money, he had also a concurrent remedy, on the ground of fraud, in equity.

3rdly, That in equity the effect of the misrepresentation, so far as regarded the Statute of Limitations, was the same as if it had been made on the day the fraud was discovered, notwithstanding the partnership had been dissolved more than six years before. *Blair v. Bromley*, 2 Phill. 354.

Cases cited in the judgment: *Sadler v. Lee*, 6 Beav. 330; *Bale v. Scales*, 12 Ves. 402; *Brown v. Southouse*, 3 Bro. C. C. 107; *Evans v. Bicknell*, 6 Ves. 132; *Middleton v. Middleton*, 1 Jac. & W. 96; *Luttrell v. Olmius* in *Mestier v. Gillespie*, 11 Ves. 638; *Colt v. Woollaston*, 2 P. Wms. 156.

2. *Mortgagor and Mortgagee.—Transferee of mortgage.—20 years' possession.—Acknowledgment.*—In 1816, the mortgagee, under a mortgage created some years before, entered into possession of the mortgaged premises, and in 1827 he executed a transfer of his mortgage to another. The transferee thereupon entered into possession, and in 1828 executed a transfer of his mortgage to a second transferee, who then entered into possession. The mortgagor was not a party to either transfer, and had not, from the time the original mortgagee entered into possession, received any acknowledgment in writing of his equity of redemption. In 1833, the Statute of Limitations (3 & 4 W. 4, c. 27, s. 28) was passed, and barred all suits for redemption after 20 years' possession by the mortgagee, and no acknowledgment in the meantime of the right of redemption given to the mortgagor or his agent, in writing, signed by the mortgagee. In 1845, the representative of the mortgagor filed his bill for redemption against the representatives of the second transferee: *Held*, that the statute operated retrospectively, by taking from the mortgagor the benefit of the acknowledgment which had already been made of the mortgage-title in the transfer of 1827 and 1828; and that the suit (as to that estate) was therefore barred. *Batchelor v. Middleton*, 6 Hare, 75.

3. *Devisee of mortgagor.*—In a suit to redeem the mortgaged estate, where the defendant, the alleged mortgagee, claims an absolute title by virtue of the Statute of Limitations;

legatees whose legacies are, under the will of the mortgagor, charged on the mortgaged premises, are necessary parties. *Batchelor v. Middleton*, 6 Hare, 78.

4. A debtor by simple contract was declared lunatic in 1823, and two years after the creditor brought an action for his debt. The committee of the lunatic filed a bill to restrain the action, and an order was made by consent of the creditor, that the action should be stayed, and that he should be restrained from further proceeding in it, and from suing the debtor at law in any other proceeding, and the creditor was to be at liberty to prove his debt, if he could, in the matter of the lunacy. In 1828, the Master reported that this, among other debts, required reconsideration, and finally he rejected the claim. The lunacy was never superseded, but in 1841, the debtor charged his estates with payment of his debts, and died in 1843. In 1844, the creditor filed a bill for the administration of his estate, and the Court held, that the effect of Statute of Limitations were not excluded by the proceedings, and dismissed the bill with costs. *Rocke v. Cooke*, 35 L. O. 325.

MORTGAGE.

See *Limitations, Statute of*, 2, 3.

MORTMAIN.

1. *Gas company*.—Shares in gas light and in a dock company, which possessed real estates for the purposes of their undertaking: *Held*, not within the Statute of Mortmain. *Sparling v. Parker*, 9 Beav. 450.

2. *Canal*.—Canal shares, which by act of parliament were declared to be personal estates, and transmissible as such: *Held*, by Sir John Leach, to be within the Mortmain Act. *Tomlinson v. Tomlinson*, 9 Beav. 459.

3. *Dock shares*.—Shares in the London Dock Company and in the East and West India Dock Company, *Held*, not to be interests in land within the Statute of Mortmain, 9 G. 2, c. 36. *Hilton v. Giraud*, 1 De G. & S. 183.

MUNICIPAL CORPORATION.

Liability of the new municipal corporations and the rate-payers of their boroughs, for the breaches of trust of the old corporations, and the costs of obtaining redress.

The new corporations succeed to the debts and duties of the old corporations, whose place they now occupy, as well as to their estates, property, and rights. *Attorney-General v. Corporation of Leicester*, 9 Beav. 546.

See *Lands Clauses' Consolidation*.

PARTNERSHIP.

See *Limitations, Statute of*, 1.

RAILWAY.

1. *Apportionment of purchase-money*.—A lessor and a lessee, entitled to renewal, agreed with a railway company for the sale to them of a piece of land for a specific sum, which was to include compensation for damages done by the severance of the land from other land belonging to the lessee. The Court declined, upon the petition of the lessee, to apportion the sum

between him and the lessor. *Ex parte Ward, Re Nottingham and Lincoln Railway*, 35 L. O. 411.

2. *Right to take land for stations*.—Question whether, under the words "railway and works," a railway company had a right, by the compulsory powers of their act, to take a piece of land for the purpose of building a station: *Held*, that they had. *Cotter v. Midland Railway Company*, 2 Phill. 469.

REAL ESTATE.

Sale for payment of debts.—After a decree in a creditor's suit for the sale of the real estate of the testator, and the application of the proceeds in payment of the debt, and after a sale under that decree, the devisees of the estate, being lunatic or out of the jurisdiction, are trustees of the estate within the statute 1 W. 4, c. 60, for the plaintiff in the cause. *Semble*.

If the devisees in such a case are not trustees for the plaintiff, by the effect of the decree the Court cannot make them such trustees by the effect of the decree, an express declaration thereof (if necessary) should be made by decree, and cannot be properly made upon petition. *Jackson v. Milfield*, 5 Hare, 538.

Case cited in the judgment: *King v. Leach*, 2 Hare, 57.

ROYAL PROBATE.

A legatee, claiming under an alleged will of Geo. 3, under his sign manual, in pursuance of the 40 G. 3, c. 88, s. 10, filed a bill against the executor of Geo. 4, alleging that Geo. 4 and his executors had possessed the assets of G. 3, and it alleged that the will had not been, and, being a sovereign's will, could not be proved. A demurrer was allowed, on the ground that until the will had been proved this Court had no jurisdiction; and, *semble*, that the proper remedy against Geo. 4 would have been by petition of right. *Ryves v. Duke of Wellington*, 9 Beav. 579.

STAMP.

Probate duty.—The executor cannot sue in equity for a sum alleged to be due to his testator's estate, although dependent upon the result of an account, without obtaining a proper stamp.

Whether the stamp must cover the amount specifically claimed, is left to the decision of the commissioners. *Howard v. Prince*, 34 L. O. 153.

USURY.

Correction of bond.—The plaintiff lent the defendant a sum of money on his bond and an equitable deposit. The bond, on the face of it, was usurious, and an action having been brought on it, the plaintiff failed. The plaintiff afterwards came into equity, showing that the bond had been erroneously prepared, and that in fact the contract was not usurious, and praying that the instrument might be reformed, and effect given to the equitable deposit. The Court, being satisfied of the error, *Held*, that the plaintiff was entitled to the relief he asked. *Hodgkinson v. Wyatt*, 9 Beav. 566.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MAY 27, 1848.

—“ Quod magis ad nos
Pertinet, et noscire malum est, agitamus.”

HORAT.

REVIEW OF THE RECENT DECISIONS UPON THE COUNTY COURTS' ACT.

THE cases arising out of the County Courts Act, moved in the Courts of Law during the last Term, have been too numerous to allow of our keeping pace with them in that portion of the publication devoted to original reports. The number and variety of the questions thus brought under the consideration of the Superior Courts indicates the extent and importance of the changes produced by the recent measure in the administration of justice, and their supposed interference with the rights of individuals. It may afford matter for surprise that, notwithstanding the elaborate care taken in framing the 9 & 10 Vict. c. 95, to prevent the Superior Courts from interfering with the proceedings or decisions of the County Courts, the former should be appealed to in so many instances. It must be remembered, however, that the operation of the new act only begins to be felt, that the extent and limits of the jurisdiction of the new courts can scarcely yet be said to be authoritatively defined, and it cannot be wondered at if suitors, who feel themselves aggrieved by the course of proceeding adopted by those who preside in the newly established tribunals, should find it difficult to understand, and reluctantly believe, that the Courts of Law, to which they have long been accustomed to look with confidence and respect, are impotent to grant them redress.

The 89th section of the County Courts Act declares, that “every order and judg-
• VOL. XXXVI. No. 1,055.

ment of any court holden under this act shall be final and conclusive between the parties,” &c., and therefore it is quite clear that when an order has been made, or a judgment pronounced by a judge of the County Courts in a matter falling within his jurisdiction, however much he may have misapprehended the facts or misapplied the law, the Superior Courts can give no relief. This rule is clearly illustrated in the case of *Ex parte Lenneghan*, which will be found reported in a subsequent page under the head of the Court of Exchequer. In that case the defendant was sued by a person named *Robinson* in the Clerkenwell County Court, and neither knew nor heard anything of the proceedings taken against him until he found an officer at his lodgings in possession of his furniture under process of execution from the Clerkenwell Court. Having paid the amount of the execution under protest, Lenneghan proceeded to the County Court, and it turned out upon investigation, that the summons had been served from the County Court at a place called Paul's Villa, where the defendant had never resided, and that when the summons was left, the person in occupation of the house stated to the process-server that Lenneghan did not reside there, and that no such person was known to him. Under these circumstances, the judge of the County Court made the following order:—

“It is ordered that on the defendant undertaking to appear and defend this case on the merits, and also undertaking to bring no action against the plaintiff, or any officer of the Court, the judgment be set aside, and in default

of giving such undertaking on Saturday next, it is ordered that the said judgment and execution be confirmed."

The defendant, it seems, thought he ought not to be prevented from taking proceedings against the officer of the Court for the illegal seizure of his goods, and declined to accept a new trial upon the conditions the judge of the County Court thought proper to impose upon him. He applied under these circumstances to the Court of Exchequer for a writ of prohibition, but that Court decided, that as the execution was already executed, there was nothing to prohibit; and, at all events, as the judge of the County Court had jurisdiction over the matter, and was satisfied that there had been due service of the summons, the Superior Court could not interfere to review his determination. It is the bailiff of the Court, and not the agent of the plaintiff, who is responsible in the County Courts for the due service of the summons, and as there appears to have been at least a very extraordinary degree of negligence on the part of the officer to whom the service of the summons was entrusted in this case, we confess we should have felt better satisfied if the judge of the County Court had not thrown the shield of his protection over the officer, and suffered the defendant to proceed against him as he thought fit; but no one can doubt that the principle upon which the Court of Exchequer refused the application was correct, and that the judge of the County Court had acted in a matter exclusively within his jurisdiction, and in respect to which no other tribunal known to the law could interfere with his discretion.

The case of *Jones v. Jones*, before Mr. Justice Coleridge, in the Bail Court, reported in a former number, (*ante*, p. 33,) illustrates the same principle in the application of which the Court came to a different conclusion. In that case it appeared that the County Court judge, after three adjournments, in the presence of both parties, decided in favour of the defendant upon a defence founded on the Statute of Limitations, and ordered that the costs should be paid equally by both parties. Subsequently, however, behind the backs of both parties, he rescinded his former decision, and gave judgment for the plaintiff. Upon this state of facts, Mr. Justice Coleridge thought the rule for a prohibition should be made absolute, "not," says the learned judge, "on the ground of an improper exercise of discretion by the judge, because on that ground I should have no

right to interfere, but on the ground that he has exceeded his jurisdiction, which he certainly has done," &c.

The members of the larger branch of the legal profession have some reason to congratulate themselves upon the construction put by the Courts upon the 67th sect. of the County Court Act, which enacts, "that no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any Court holden under this act." The exceptions referred to in this clause are confined to the Universities and Stannaries, and it was contended, that an attorney suing in the Superior Courts for a debt for which he might have sued in the County Court, was not exempted by any privilege from the jurisdiction of the County Court, and could not recover his costs in the Superior Court. The Court of Queen's Bench, however, in the case of *Lewis v. Hance*,^a decided, that unless they were to overrule all former decisions, they could not hold that the privilege of an attorney, being plaintiff, was destroyed by the provisions of the late act. "The County Court," says Lord Denman, "has no power over any one, unless he brings himself within its jurisdiction by suing therein, or is brought within its jurisdiction by being sued therein. Except by the plaintiff, the plaintiff does not bring himself within the jurisdiction of the County Court. To exempt him, therefore, when he is not a defendant, he requires no privilege, because he is not within the jurisdiction. We cannot, on the language of this statute, hold that attorneys plaintiffs are within its provisions." Towards the close of the Term, the same question was brought before the Court of Exchequer in a case of *Jones v. Brown*, a report of which we hope to be able to find room to insert next week. In that case, as in *Lewis v. Hance*, the matter came before the Court upon a rule to enter a suggestion to deprive the plaintiff of costs. The Court of Exchequer not only adopted the construction put upon the provisions of the 9 & 10 Vict. c. 95, by the Court of Queen's Bench, but discharged the rule with costs, expressly on the ground that the question was raised upon the construction of a provision of a new act of parliament, the language of which was similar to that contained in many old acts, which had already received a judicial construction. As respects attorneys being plaintiffs, therefore, the question may be said to be settled. Whether

an attorney being sued in the County Courts can claim his privilege to exempt him from his jurisdiction, has not yet been expressly decided, we believe, in any of the Superior Courts, but from the judgment of the Court of Queen's Bench in the case of *Lewis v. Hance*, already adverted to, we should rather conclude that, in the opinion of that Court, an attorney defendant is not exempt from the jurisdiction of the County Court by reason of privilege, although he is entitled to sue in the Superior Courts, without any apprehension of being deprived of his costs, in the event of his obtaining a verdict.

The most curious, and perhaps in one sense the most important, of all the County Court questions brought under the notice of the Superior Courts during the last Term, was that of the *Queen v. Parham*, in which the Court of Queen's Bench, after hearing the Attorney-General in opposition, made a rule absolute for an information in the nature of a *quo warranto*, calling upon Mr. Parham, to show by what authority he assumes to exercise the office of judge of the County Court of Worcestershire. The questions raised under this rule were,—1st. Whether the same individual could be appointed judge of more than one district for holding County Courts; 2ndly, Whether the appointment of Mr. Parham, which was by a single instrument, containing a distinct clause of appointment for the Worcestershire districts, and a distinct clause of appointment for the Herefordshire district, was a good appointment; and 3rdly, Whether the abolition of the Small Debts Court of Kidderminster, operated, under the 9 & 10 Vict. c. 95, to destroy the title of Mr. Parham to be appointed, under the 13th section, judge of the district of which the territory formerly subject to the jurisdiction of the Kidderminster Small Debts Court formed a part. It was suggested, that if this rule was made absolute Mr. Parham would have an opportunity of going to a Court of Error, and the rule was accordingly made absolute, the Court intimating that the question was one which ought to be put in a course for final determination as soon as possible.

We must not conclude without directing attention to the case of *Nind v. Rhodes* reported, *post*, p. 69, in which Mr. Justice Coleridge decided, that actions on bills of exchange not exceeding 20*l.*, are within the jurisdiction of the County Courts, and that although the idea of locality does not attach to them, and that they do not fall within

the scope of the 128th section of the County Courts' Act, which only gives a concurrent jurisdiction to the County Courts with the Superior Courts in all cases:—"Where the cause of action did not arise wholly or in some material point, within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought." The opinion of Mr. Justice Coleridge on this point is understood to be at variance with that expressed by one of the learned judges of the Court of Common Pleas, and that Court in granting a rule in a case now depending, to show cause why a suggestion should not be entered to deprive the plaintiff of costs, intimated to the learned Serjeant who obtained the rule, that he would have to satisfy the Court that actions on bills of exchange not exceeding 20*l.* were within the provisions of the 9 & 10 Vict. c. 95, so as to prevent the plaintiff suing in the Superior Courts from recovering his costs. No doubt the question will be finally settled during the present Term.

A case of some professional interest (*In re Clipperton*) has been argued and now stands for judgment in the Court of Queen's Bench, in which the question is, whether an attorney, under a special contract with his own client, can recover after the ordinary rate of remuneration for business done in the County Courts, or is prohibited by the 9 & 10 Vict. c. 95, s. 91, from receiving in any event, or for any amount of service, a greater sum than 15*s.* Our readers shall be put in possession of the judgment in this case without delay, as it will in fact determine whether the suitors in the County Courts are to be deprived of all assistance from respectable practitioners, and left to the tender mercies of the very scum and dregs of the profession.

REMEDIES AGAINST THE HUNDRED BILL.

As our readers are already aware, some months since, when the windows of several respectable inhabitants of the metropolis were wantonly demolished by idle and mischievous persons, it was stated by the Attorney-General in his place in parliament, that the law did not afford any pecuniary remedy to the parties whose property was maliciously injured or destroyed, inasmuch as the acts of the persons who had tumultuously assembled, however reprehensible, did not amount to felony. It was at once felt, by all parties in the House, that the law in

NOTICES OF NEW BOOKS.

A Treatise on the Law of Evidence, as administered in England and Ireland, with Illustrations from the American and other Foreign Laws. By JOHN PITT TAYLOR, Esq., of the Middle Temple, Barrister-at-Law. In two volumes 8vo. London: A. Maxwell & Son. 1848.

this respect was defective, and that the title of parties damnified by the acts of rioters to compensation ought not to depend in any case upon the legal definition of the offence. A bill was therefore brought in by Sir William Clay, Mr. Banks, and Mr. Baines, "for amending the Laws relative to Remedies against the Hundred in England." The bill is concisely and simply framed: after reciting that by the 7 & 8 G. 4, c. 31,

"The inhabitants of every hundred, wapentake, ward or other district in the nature of a hundred, and the inhabitants of every county of a city and town, and other place not within hundreds in which the felonious offences therein described are committed, are respectively made liable to yield full compensation to persons damnified thereby:

"And that it is expedient such inhabitants should be made liable to yield compensation in like manner to parties damnified by the acts of persons riotously and tumultuously assembled, which may not amount to felony."

It provides by one short clause:—

"That in every case where any house, shop or other building whatever, or any part thereof, shall be destroyed, or shall be in any manner damaged or injured, or where any fixtures thereto attached, or any furniture, goods or commodities whatever which shall be therein shall be destroyed, taken away or damaged by the act or acts of any riotous or tumultuous assembly of persons, or by the act or acts of any person or persons engaged in or making part of such riotous or tumultuous assembly, the inhabitants of the hundred, wapentake, ward or other district in the nature of a hundred, or of the county of the city or town, liberty, franchise or place in which such damage shall be done, shall be liable to yield full compensation in damages to the person or persons injured and damnified by such destruction, taking away or damage, and such damages shall and may be demanded, sued for or recovered by the same means and in the same manner as are provided by the said recited act in respect of the compensation thereby made payable; and all the provisions of the said recited act shall extend to the liability and compensation hereby created and provided as if the same had been created and provided respectively by the said recited act."

This bill has been standing for some weeks for a second reading, and has not, so far as we can learn, undergone any discussion. Its objects are so reasonable and unobjectionable, that we trust it will be persevered in, and not allowed to drop merely because it may be hoped that another occasion will not speedily arise for giving effect to its provisions.

WE owe an apology to the author of this work for having delayed so long that favourable notice of it, which its merits require. One reason of that delay, however, was a wish to have sufficient time to look into a work of so much importance, before committing ourselves to a recommendation of it; and having now enjoyed that opportunity, we have no hesitation in saying that, in our opinion, Mr. Taylor has made a valuable addition to our legal literature. He has presented the profession with an elaborate, well-arranged, and—as far as we have been able to ascertain—accurate work, on a subject of great practical importance—the Law of Evidence—which may be said to have been almost entirely remodelled in England within the last few years, and certainly placed upon a once sounder and wider foundations than it has ever heretofore rested. The bold reforms effected by the legislature have been vigorously, and at the same time cautiously carried out by the Courts; the result being that which we have indicated—a thorough remodelling of the system, occasioning great corresponding changes in the entire body of the law. The invaluable works of Mr. Phillips and Mr. Starkie, after having done great service in their time, the remodelling of which we speak has rendered to a considerable extent obsolete; or, speaking too strongly, has at least impaired their value very seriously; for it cannot, we think, be denied that both of these works have been hitherto only imperfectly accommodated to the altered and improved condition of the law. We dare say Mr. Taylor is as ready as we are to acknowledge the great merit of these authors; whose masterly exposition of principles, and lucid arrangement of details, have laid an entire generation of lawyers under deep obligations. Mr. Taylor has evidently profited by their labours, and the result is to be found in the important and valuable performance which we are now recommending to our readers—for we do recommend it heartily. His original intention, it seems, was merely to edit the elementary treatise of an American Professor of the Law, Dr. Greenleaf; but after having

been for some time engaged in the task, he determined, and as we think wisely, to abandon it, and aim at producing an independent work, only based upon that which he had intended to edit. The reasons which Mr. Taylor assigns in his preface for so doing are satisfactory. Dr. Greenleaf's work has undoubted merits, and is remarkably happy as an elementary exposition of principles; but the great alteration in the law, of which we have been speaking, not having been adopted in America, it is obviously dangerous for a student to rely upon the work of the American lawyer. In Mr. Taylor's work, however, will be found incorporated all that is excellent in Dr. Greenleaf's; while there is superadded a luminous and able exposition of the English Law of Evidence in its existing improved form. Copious illustrations are derived from American authorities, and also from the decisions of the Irish Courts; features, these, of Mr. Taylor's work, which will greatly recommend it to all who are practically concerned in the Law of Evidence.

From a note to chap. II. (vol. 1, p. 9, n. t.) we learn that Mr. Taylor originally suggested the alterations embodied in the late excellent Documentary Evidence Act, (8 & 9 Vict. c. 113,) and afterwards prepared the bill which finally obtained the approval of the legislature under the sanction of Lord Brougham, to whom Mr. Taylor dedicates his work in a strain very highly laudatory of that noble and learned lord. Mr. Taylor deserves, under these circumstances, much credit for his "suggestions," some of which are of great practical value, showing a mind perfectly acquainted with the necessities of the case, and able at one swoop to get rid of a great number of idle, and most vexatious impediments to the administration of justice. It is evident from the whole work that Mr. Taylor is thoroughly conversant with the extensive and difficult subject to which he has devoted so much of his time and attention. He has his eye constantly fixed on *principle*, and in going along with him, the intelligent reader will find many suggestions for further improvement of the Law of Evidence worthy of consideration, and calculated to aid him in comprehending the true scope and object of the law as it is.

Mr. Taylor is evidently a very zealous law reformer, and an ardent admirer of the late Jeremy Bentham, whose name and writings he often mentions in terms of al-

most reverential deference and respect. Mr. Taylor must not, however, go too fast nor too far in this direction; a caution which he will take in good part, and which some portions of the work render by no means supererogatory.

Having spoken thus favourably of this work as a whole, we must point out one or two *maculae*, which we trust not to find in another edition. We very much regret, as practical men, the absence of any information on the Stamp Laws; and consider the reasons assigned by Mr. Taylor, in his Preface, for such omission, utterly unsatisfactory. It is plain that he *shirked* the labour which it would have imposed upon him: nay, he himself admits as much. "Last, though I confess, not least, the subject is one of the most repulsive which could be selected by an author for discussion." This cavalier-like dealing with difficulty is quite a novelty; and would be amusing, were it not a serious matter to find a head of law of great and urgent practical importance, discarded from a work in which the practitioner has a right to find it. A man of Mr. Taylor's abilities should find no difficulty in supplying this deficiency, and in giving an able *condensation* of the law on this subject. As a matter of minor criticism, we object to the occasional style of journalism, so to speak, which characterises the composition: as if the pages of a grave didactic treatise had been transferred from those of some Review or Magazine; in which the awful "we" figures legitimately enough, but is quite out of place in an elaborate treatise—from the dignity of which it detracts not a little. Akin to this is a certain levity of tone occasionally perceptible—as at p. 187, where an anecdote is introduced into the body of the work, illustrative perhaps of the point for which the author is contending, but told far too jocularly for so grave an occasion. Again, at p. 53, (note n.) we have a sneering allusion to "that *semi-woman* Lord Orford;"—while in the note (k.) almost immediately preceding it, we find the *woman of Samaria* (John iv. 9.)—cited as an instance of the "proneuess to exaggerate, so remarkable in the softer sex!" This allusion appears to us objectionable in every point of view, for reasons into which we shall not here enter. Mr. Taylor is also sometimes unceremoniously free in expressing a difference of opinion with judicial authority. These, however, are comparatively trivial imperfections, which we allude to with reluctance where there is so much

to approve; and we heartily congratulate Mr. Taylor on the result of his labours, as they are highly creditable to himself, evincing the mastery of a very difficult branch of law, and calculated to afford valuable assistance to all branches of the profession.

CERTIFICATE DUTY.

WE have to remind our readers that Tuesday next, the 30th instant, is the day fixed for bringing in the Bill to Repeal the Certificate Duty. We understand that all the members who have presented petitions for the repeal of the tax on behalf of their constituents the attorneys and solicitors in all parts of the kingdom, have been informed of the day appointed for the intended motion. Other members to whom the statement of the Incorporated Law Society has been submitted in support of the measure, have also been addressed on the subject, seconded by the important influence of our country brethren. Thus a very large part of the House has, we trust, become interested, at least, in the consideration of the measure, if not prepared forthwith to pass it.

Both justice and policy demand the abrogation of this impost:—justice to the profession; policy to the public. The sense of the House will, we trust, be fairly taken on this gross invasion of the sound principles of taxation. The difficulties surrounding the *Budget*, which is yet to be developed, may prevent any immediate relief; but it will be an important step towards success in another Session, if the justice of the claim be substantiated, nay, we hope, candidly and honestly admitted by the government.

Further petitions are in the hands of members to be presented either before or at the time of bringing on the question. Upwards of 3,000 have individually given their signatures, and as many more have been, or will be, represented by the petitions from collective bodies under corporate seals or official signatures.

The following are the statements in the Petition of the President and Society of Advocates in Aberdeen, incorporated by Royal Charter:—

“That the petitioners beg leave to call the attention of the House to the partial, unequal, and unjust nature of the Certificate Duty of Tax levied upon attorneys and solicitors.

“It is partial, because no other industrial class of the community is taxed to such an extent as the attorneys and solicitors. Before

they can be admitted to practise in any Court of the kingdom, they must have served an apprenticeship or clerkship, the articles of which have been subjected to a very heavy and fixed Stamp Duty, whereas apprentices to every other profession or business pay only an *ad valorem* duty, regulated by the amount of apprentice fee, and not in one case in a thousand equal to the duty paid by this class. In the next place, on being admitted to practise before any Court, and also on becoming notaries, the attorneys and solicitors are called on to pay other very severe Stamp Duties before they can commence business,—an impost peculiar, or nearly so, to this profession. And again, from the day they begin to earn their livelihood, they are compelled to pay a fixed and annual tax in the name of a certificate, to such an amount that the petitioners venture to affirm that, on the average throughout the kingdom, it is not less than four per cent. upon their professional earnings.

“The injustice of the annual tax on attorneys’ certificates is manifest from the facts that the same sum is demanded from each attorney, without any reference to their comparative emoluments, and that no similar tax is imposed upon the other learned professions, nor even upon the higher and more lucrative branch of the legal body, nor upon merchants or manufacturers; whereas, if it be necessary to tax the talent and industry of individuals, all professions and trades ought to be dealt with alike.

“The petitioners also represent that they are subject to the Income Tax, and all other State imposts, equally with the rest of the community; and, while they are willing to bear their fair share of public burdens, they deprecate an additional and partial taxation being continued to be levied from them.”

ANCIENT CASE AND OPINION.

A MAN seized of two acres of land devises all his lands, &c., afterwarde purchases other lands, and dyes, the will not altered.

Q. Whether the lands purchased since the making of the will shall be subject to the devise in the will, or doe pass by the will.

“In case hee make no farther mention of this land purchased in any new publication of his will, then the new purchased land will not passe, but if, after the purchase of the other landes, hee declare that his intent is all his landes should passe by his will, then the new purchased landes will passe. This case, with this difference, is agreed in Rolle’s 1st Z., page 618, s. 7.”

“WILLIAM BRENT.”

[There is no date to the opinion, but it was probably about the year 1700. The following is the authority referred to:—

7. Mes si puis le purchase del Mannor de D. il deliver le primer volunt come son volunt, et dit que ceo serra son volunt sans mister aucun

parolls al ceo, uncore ceo est un novell publication a faire le terre novelment purchase a passer. M. 38, 39, El. B. R. Dubitatur.]

MASTERS EXTRAORDINARY IN CHANCERY.

From April 25th, to May 19th, 1848, both inclusive, with dates when gazetted.

Duffield, William Ward, Chelmsford. May 16.

Howard, John, Portsmouth. May 12.

Lawrence, Charles William, Cirencester. May 9.

Packer, Richard, Axbridge. May 9.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From April 25th, to May 19th, 1848, both inclusive, with dates when gazetted.

Gregson, George, and John Tiplady, Durham, Attorneys and Solicitors. May 9.

Parsons, William, and Samuel Parsons, jun., Nottingham, Attorneys and Solicitors. May 12.

Sculthorpe, William, and Robert Sculthorpe, Nottingham, Attorneys and Solicitors. May 2.

Thompson, Edward William, and Thomas Jenson, Glossop, Attorneys and Solicitors. April 25.

Wilton, Joseph Robert, and William Blackman, 1, Raymond Buildings, Gray's Inn, Solicitors. April 25.

PERPETUAL COMMISSIONER.

Appointed under the *Fines' and Recoveries' Act*.

Holmes, Richard, Arundel, in and for the county of Sussex. May 12.

NOTES OF THE WEEK.

THE BAR MEETING.

"A CHANCERY BARRISTER" states, that there is an omission in our Report of the Bar Meeting last Saturday. He says, that "both Sir F. Thesiger and Mr. Serjeant Talfourd emphatically stated their opinion, that any gentleman having signed the resolution entered into by the Parliamentary Bar, was strictly bound in honour by it, and that no professional rule could discharge him from that obligation, if he saw fit to sign such a resolution"—and such expressions were received with unequivocal approbation.

The omission (our Correspondent observes) is of importance, now that it appears that Messrs. Keating and Smith *did* sign the resolution, and he observes, that it was not generally understood at the meeting, at least by the gentlemen near him, that such was the case.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor of England.

In re the *Sheffield and Lincolnshire Railway Act, Ex parte Vicar of Charborough*. March 25, 1848.

RE-INVESTMENT OF MONEY IN COURT.—LANDS CLAUSES CONSOLIDATION ACT.—COSTS.

The purchase-money for part of a glebe taken by a railway company having been paid into Court, the company were ordered to pay the costs of re-investing the same in a purchase of land by the vicar, although such purchase was for a much larger sum than the one in Court.

THE Manchester, Sheffield, and Lincolnshire Railway Company purchased a portion of the glebe lands of the parish of Charborough, and paid the purchase-money, amounting to 644*l.*, into court under the provisions of the Lands Clauses Consolidation Act. In the meantime the vicar agreed to purchase other land for the sum of 1,000*l.*, and on the usual reference to the Master, he reported that it would be for the benefit of the vicar that such agreement should be completed; that a good title could be made to the property; and, moreover, that the Bishop of Lincoln had agreed to raise under an act of parliament such a sum as, together with the 644*l.*, would make up the 1,000*l.* A

petition was now presented by the vicar for sale of the bank annuities representing the 644*l.* for the Master to settle a conveyance, and that the petitioner's costs of the re-investment and of all proceedings relating thereto might be paid by the company.

Mr. Bethell and Mr. Bloxam, for the petition, urged that the petitioner was entitled to his costs under the 80th section of the Lands Clauses Consolidation Act; the fact of the purchase-money being more than the sum in Court did not exonerate the company from paying such costs. The case of *Ex parte Tetley*, 4 Rail. Cases, 55, although apparently similar to the present, did not apply; that case depended on a clause in a special act, and not on the Lands Clauses Consolidation Act.

Mr. Roll and Mr. T. Elliston, contra, contended that *Ex parte Tetley* was directly in point; that the expense attending a large purchase was manifestly more than that attending a small one; and that if the Court granted the petitioner's request, very large purchases might be made, and railway companies saddled with proportionably large expenses. They cited *Ex parte Newton*, 4 Y. & C. Exch. 518.

The Vice-Chancellor made the order according to the prayer of the petition, observing that the petition had been so framed as to avoid the difficulty in *Ex parte Tetley*.

Queen's Bench.

(Before the Four Judges.)

Lewis v. Hance. Jones v. Savage.

ATTORNEY SUING IN COUNTY COURT.

An attorney may, notwithstanding the 9 & 10 Vict. c. 95, sue as a plaintiff in one of the Superior Courts, and will, if successful, be entitled to costs as before that statute.

THE same question was raised in both these cases, namely, whether an attorney plaintiff must sue as a plaintiff in the County Court, under circumstances in which any other person would be compelled to proceed there, or whether he was entitled in virtue of his privilege as an attorney to sue in the Superior Courts at Westminster. In each case the plaintiff was an attorney of the Superior Courts at Westminster, and the amount of the debt was under 20*l.* In each case also a rule had been obtained to enter a suggestion on the record, that the plaintiff might have sued in the County Court, the object of the rule being to deprive the plaintiff of costs.

Mr. Lush showed cause in the first, and

Mr. Mellor in the second case.

Mr. Creasy was heard in support of the rule in each case.

The Court had taken time to consider.

Lord Denman, C. J., delivered judgment. The question in the case of *Lewis v. Hance* is, whether the plaintiff, who is an attorney of the Superior Courts at Westminster, is bound, under the penalty of being deprived of his costs, to sue for a debt under 20*l.* in the County Courts, established by the 9 & 10 Vict. c. 95. This question depends on the construction of several sections of the statute. The 58th section enacts, that "all pleas in personal actions, where the debt or damage claimed does not amount to more than 20*l.*, may be holden in the County Court," and the 67th section declares that "no privilege except as thereafter excepted, should be allowed to exempt any person from the jurisdiction of any Court holden under this act." The 140th and 141st sections alone contain the statement of cases of express exemption from the provisions of the act, and these sections relate only to the universities of Oxford and Cambridge, and to the Courts of the Lord Warden of the Stannaries in Cornwall. By the 129th section it is enacted, that if any action shall be commenced, after the passing of the act, in any of her Majesty's Superior Courts of Record, for any cause other than those lastly thereinbefore specified, for which a plaint might have been entered in any Court holden under the act, and a verdict shall be found for the plaintiff in any action of contract for less than 20*l.*, and in any action of tort for less than 5*l.*, the plaintiff shall recover such sum only, and no costs. Here the plaintiff was an attorney; the proceeding was an action upon a bill of exchange for an amount less than 20*l.* The Uniformity of Process Act took away certain privileges of attorneys, but not that of suing in the Superior

Courts at Westminster. The question of an attorney's right to costs had been raised on previous statutes. The 39 & 40 Geo. 3, c. 104, s. 10, uses the strong words,—“That no privilege shall be allowed to exempt any person from the jurisdiction of the said Court of Requests on account of his being an attorney or solicitor of the Courts of Westminster;” and in sect. 12 it is declared that in any action brought in any other Court than the said Court of Requests, if the damages recovered should be less than 5*l.*, the plaintiff should not recover any costs whatever. Yet that statute has been expressly held to extend to an attorney when defendant, but not when plaintiff. *Board v. Parker.*^a The words in the present statute are not so strong as in that just mentioned, and certainly not so strong as in the 10 Geo. 3, c. 29, s. 15, which established the Blackheath Court of Requests. The 23 Geo. 2, c. 33, which was the Middlesex County Court Act, enacted, that if any action for debt or upon assumpsit should be brought in any of the Courts of Westminster, and the jurors should find damages for the plaintiff under 40*s.*, no costs should be awarded to the plaintiff; but it had been decided upon the construction of that statute, that an attorney's privilege of suing in the Superior Courts is not thereby taken away, and that he is still entitled to his costs when suing in a Superior Court after those acts as he had been before the time of their passing; provided only, that when suing he sues in the form appropriate to attorneys. *Parker v. Vaughan,*^b a decision supported by that of *Johnson v. Bray.*^c It is therefore impossible to say that the plaintiff is to be deprived of his costs in the present case, unless the Court should be prepared to overrule all those cases decided on preceding statutes. We are not prepared to do this. The 67th section of the 9 & 10 Vict. c. 95, has been relied on; but the words of that section though apparently extensive, do not apply to an attorney suing as a plaintiff in a Superior Court, but to a debtor, who is sued in the County Court, and who cannot by virtue of any privilege exempt himself from its provisions. It is indeed difficult to see how a creditor who has a right to sue in a superior Court can be said to be “within the jurisdiction” of the County Court. He may bring himself within that jurisdiction as a plaintiff, or be brought within it as a defendant, but till actually within its jurisdiction, the 67th section of the statute will not apply to him. However desirable, therefore, it may be that an attorney who sues as a plaintiff should be deprived of costs if he sues in the Superior Courts, when his claim amounts to less than 20*l.*, the Court is not prepared to say that the legislature had expressed an intention that such should be the case. The rule for entering the suggestion must therefore be discharged.

The same result followed in the second case.

^a 7 East, 47.

^b 2 Bos. & Pul. 29.

^c 2 Brod. & Ring. 598.

The Queen v. Fontaine Moreau. Easter Term, 1848.

PERJURY.—AWARD.—EVIDENCE.

In an indictment for perjury committed in alleging in an affidavit, that the prosecutor was indebted to the defendant in a sum of money; the award of an arbitrator finding that nothing was due from the prosecutor to the defendant, was held to be a mere declaration of opinion on the part of the arbitrator, and therefore not admissible in evidence on the trial of the indictment, for the purpose of showing the falsehood of the demand.

THE defendant was indicted for perjury, and found guilty. The perjury committed was in making affidavit that the prosecutor was indebted to him in the sum of 40*l.* When the civil action came on for trial, the cause was referred to an arbitrator, who found that there was not anything due from the prosecutor to the defendant. The indictment was preferred before the award of the arbitrator was made. At the trial of the indictment the award of the arbitrator was admitted in evidence, on behalf of the prosecution, by Lord Denman, C. J., who tried the indictment on the ground, that as each party had submitted to an arbitrator, both must be bound by his award. A rule nisi was afterwards obtained, calling on the prosecutor to show cause why there should not be a new trial, on the ground that the award of the arbitrator was improperly received in evidence.

Mr. Serjeant Shee and Mr. Bovill showed cause. The objection to the reception of this award in evidence on a criminal charge is, that the parties are not the same, but although the award may not be evidence as to the actual state of accounts between the parties, yet in a charge of wilful perjury, it may be evidence to show the motive which influenced the defendants in making such a demand. The defendant having submitted his case to an arbitrator, the award is evidence as an admission made by him. [Coleridge, J. In Roscoe on Evidence, 137, I find it said that Lord Tenterden held at *Nisi Prius*, that in an action for damages, it was not competent for the plaintiff to give in evidence the record of an indictment where the defendant pleaded guilty to the same assault.]

Sir F. Thesiger and Mr. Jones, in support of the rule. There cannot in principle be any difference between an award and a verdict of the jury. In Starkie on Evidence, 220, the rule laid down is, that a verdict in a civil suit will not be evidence either for or against a party in a criminal proceeding; and one of the principal reasons given for such rule is the want of mutuality between the parties. The arbitrator is not constituted an agent of the party for the purpose of making an admission, any more than a jury; in each case both parties appeal to that mode of decision. The rule of law is well laid down by Parke, B., in

Blakemore v. The Glamorgan Canal Company.^a There are a great many other authorities to the same effect:—*Rea v. The Warden of the Fleet*,^b *Jones v. White*,^c *Gibson v. M'Carthy*,^d *Hillyar v. Grantham*.^e

Cur. ad. vult.

Lord Denman, C. J., now delivered the judgment of the Court.^f This was an indictment for perjury, alleged to have been committed by the defendant in an affidavit stating the prosecutor was indebted to him in a sum of 40*l.* The cause was referred to arbitration, and the arbitrator found that there was not anything due from the prosecutor to the defendant. At the trial of the indictment, in order to prove the falsehood of the claim, the award of the arbitrator was given in evidence, and the question submitted to us is, whether that award was properly admitted. We are of opinion that the decision of the arbitrator can only be considered as a declaration of opinion on the subject, and there is no authority for such a declaration being admissible in a criminal proceeding.

Rule absolute.

Queen's Bench Practice Court.

(Before Mr. Justice Coleridge.)

Nind v. Rhodes. May 5 & 9, 1848.

COUNTY COURT, JURISDICTION OF.—BILL OF EXCHANGE.—SUGGESTION TO DEPRIVE PLAINTIFF OF COSTS.

*The plaintiff brought an action in the superior court against the defendant as the acceptor of a bill of exchange for 12*l.*, and obtained a verdict for that amount, upon which an application was made to enter a suggestion on the roll to deprive the plaintiff of his costs under the 129th section of 9 & 10 Vict. c. 95. The affidavit stated all the facts necessary to show that the defendant was entitled to be sued in the County Court of Clerkenwell, but omitted to state that the judge who tried the cause did not grant a certificate to the plaintiff that the cause was a proper one to be brought in the superior court, an objection being taken to the affidavit on this ground. Held, that it was not necessary for the defendant to negative that fact, for it being in the nature of an exception, should come from the plaintiff, if he relied on it to show that the certificate had been given.*

Held, also, that bills of exchange are included in the general words of the 58th section, and not being within the excepted cases, the defendant was entitled to enter the suggestion under the 129th section to deprive the plaintiff of his costs.

^a 2 Gr. Mee. & Ros. 183. ^b 12 Mod. 387.

^c Strange, 68. ^d Cas. Tem, Hardw. 297.

^e 2 Ves. 246.

^f The case was argued before Lord Denman C. J., Coleridge, Wightman, and Erle, J's.

THIS was a rule obtained by *Barstow*, calling on the plaintiff to show cause why the judgment herein should not be entered for the amount of the verdict alone, or why a suggestion should not be entered on the roll, to deprive the plaintiff of costs, under the 129th section of the County Courts' Act, 9 & 10 Vict. c. 95. This was an action brought in the Queen's Bench, to recover the sum of 12*l.* from the defendant, as acceptor of a bill of exchange, and a verdict passed for the plaintiff for that amount: last term the present rule was obtained on affidavits, which stated that the parties lived within the jurisdiction of the Clerkenwell County Court, that the bill sued on was accepted within the jurisdiction of the said Court, and that the defendant was liable to be sued there, the amount claimed being under 20*l.*

Lush now showed cause. There are two grounds on which the rule must be discharged; 1st, the affidavit on which the rule was obtained is insufficient. The 129th section of the act 9 & 10 Vict. c. 95, under which it is sought to enter the suggestion, must be taken in conjunction with the 128th section, which shows, that the Superior Courts have concurrent jurisdiction with the County Courts, that being so, the plaintiff is entitled to his costs under the statute of Gloucester, unless they are taken away by the express words of the 129th section; by that section it is enacted, that if any action be commenced after the passing of the act in any of the Superior Courts for a cause of action for which a plaint might be entered in the County Court, and a verdict be found for less than 20*l.* in actions on contract, and 5*l.* in cases of tort, the plaintiff shall have judgment for such sum only and no costs, &c., unless "the judge who shall try the cause shall certify on the back of the record, that the action was fit to be brought in such Superior Court." Now it is for the defendant to show in his affidavit that he is excepted from paying costs to which, under the Statute of Gloucester, the plaintiff is entitled, but it is nowhere stated in the affidavit that the judge before whom the cause was tried did not certify that the cause was a proper one to be tried in the Superior Court. It was for the defendant to exclude every possibility of the plaintiff being entitled to his costs, which he has not done.

Coleridge, J. What do you say to this objection, Mr. *Barstow*? everything sworn in your affidavit may be true, and yet you may have no right to set the court in motion.

Barstow. We go through all the conditions required by the act to show we are within the operation of the 129th section—what is relied on by the other side is, that there is an exception in cases where the judge certifies; now, as the exception is relied on by them, it is for them to show that they come within it, and that the certificate has been granted; it is a fact peculiarly within the plaintiff's knowledge, for having the verdict he has the record. Suppose error were brought, it seems clear that it would not be necessary in making up the record to set out that no certificate was granted. The

present motion is merely to inform the conscience of the Court, and is not final between the parties, as the suggestion may be traversed.

Coleridge, J. I will hear Mr. *Lush* on his other point.

Lush. Then the act does not apply at all to bills of exchange. The whole scope of the act applies to contracts which have a locality; now bills of exchange have no locality, but the cause of action follows the person of the holder, to which no idea of locality can attach. On this ground no application to change the venue can be made in actions on bills. That the act only applies to contracts which have a locality is manifest by the language of the 128th section, which exempts from the jurisdiction of the County Court causes of action which "did not arise wholly, or in some material point, within the jurisdiction of the Court within which the defendant dwells."

Barstow, contra. The words of the legislature in the 128th section and the 58th are quite large enough to include bills of exchange and promissory notes, and there is no reason that they should be excluded. If it had been intended to exclude them, why were they not expressly excepted?

Lush. I do not say that they are not within the act as to concurrent jurisdiction, but I say they are not within the 129th section.

Barstow. That would call on the Court to insert the words "except in the cases of bills of exchange and notes."

Coleridge, J. I understand that it is admitted that the County Court has concurrent jurisdiction as to bills of exchange with the Superior Courts, but that it is contended that they are not within the operation of the 129th section. Now the section giving the general powers to the County Court is the 58th. That section enacts, "that all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise, may be holden in the County Court without writ." Then there is a proviso, which is very minute, "that the Court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or any franchise shall come in question, or in which the validity of any devise, &c., under any will or settlement, may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage." Now it is perfectly clear that the general words of this section are large enough to include bills of exchange and promissory notes, and it is equally clear that they are not within the exceptions. If then the County Court has a general jurisdiction over them, what is there in the 129th section to exclude them from its operation? I confess I do not see anything, and I think that unless the plaintiff shows that the cause of action arose out of the jurisdiction of the County Court, it must be considered to have attached. In this case the cause of action is shown to have arisen with-

in the jurisdiction, and therefore the objection has no foundation. As to the other point I will take time to consider.

Cur. ad. vult.

9th May. On this day Mr. Justice Coleridge said, I suspended my judgment upon one point raised by Mr. Lush in this case, because it was on a matter of frequent occurrence; I have therefore thought it right to consider the subject maturely. This was an application to enter a suggestion on the roll to deprive the plaintiff of his costs, on the ground that he had brought his action in this Court when he ought to have sued in the County Court. The affidavit upon which the rule nisi was obtained set forth all the facts which *prima facie* brought the plaintiff within the 129th section of 9 & 10 Vict. c. 95, but it did not go on to negative that the judge who tried the cause had not certified that it was a proper one to be brought in the Superior Court; and Mr. Lush, in showing cause against the rule, relied upon this omission in the affidavit as fatal to the rule. He contended that everything in the affidavit might be true, and yet that the judge might have given the certificate, and so the plaintiff be entitled to his costs; but the answer given by Mr. Barstow, that this was in the nature of an exception, and should come from the plaintiff if he relied on it, is, I think, a good answer; and that, as the fact of the certificate having been given, if it was given, was peculiarly within the plaintiff's own knowledge, and he could have brought it before the Court if it had any existence; as he has not done so, I must take it that there was in fact no such certificate, and the rule will therefore be absolute.

Rule absolute.

Common Pleas.

Batty, an infant, v. Marriott. Easter Term, 1848.

GAMES AND WAGERS ACT, 8 & 9 VICT. C. 109.
—LEGALITY OF FOOT RACE.—RECOVERY
BACK OF STAKE.

Where two persons deposited each 10l. in the hands of a third party, to abide the event of a foot-race between them, and to be paid over to the winner of such race: Held, that the party who had lost could not, by giving notice to such third party before the money had been paid over by him to the winner, that he required the amount of his deposit to be returned, entitle himself to maintain an action for the recovery back of such deposit; a foot race, since the passing of the 8 & 9 Vict. c. 109, being a lawful game, and the contract falling within the proviso in the 18th section of that statute.

This was an action for money had and received and on an account stated, to recover back a deposit of 10l. placed in the hands of the defendant as a stakeholder. Plea, never indebted. It appeared at the trial of the cause that the sum of 10l. each had been deposited

in the defendant's hands to abide the event of a foot-race agreed to be run between the plaintiff and a person named Askew, the winner of which was to receive the whole amount of 20l. The race did accordingly take place, and after some disagreement and discussion as to which of the parties had really won, the 20l. was ultimately awarded and paid to Askew, the plaintiff protesting against such payment, and claiming to have his deposit of 10l. returned. A verdict had been found in the plaintiff's favour for 10l., and a rule nisi having been subsequently obtained to set that verdict aside, and to enter a nonsuit, or for a new trial.

Ogle now showed cause. The plaintiff in the present case sues in the character of a penitent, and rests his right to recover on the ground that this was an illegal wager. The statutes 16 Car. 2, c. 7, and the 9 Ann. c. 14, make a foot-race, being for an amount above 10l., as here, illegal; and the latter statute is not entirely repealed, as will be contended on the other side, by the 8 & 9 Vict. c. 109, but only the 5th section, which makes a person offending liable to an indictment. Then, if this were so, the plaintiff's right to recover is not affected by the proviso in the 18th section of the 8 & 9 Vict. c. 109, which exempts from the operation of the section "any subscription, or contribution, or agreement to subscribe or contribute for or toward any plate, prize, or sum of money, to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise." Such proviso being rendered necessary by the previous sweeping enactment, "that all contracts or agreements, whether by parole or in writing by way of gaming or wagering, shall be null and void; and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won on any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made."

H. Hill, in support of the rule. The statute 16 Car. 2, c. 7, was the first as to foot races, and that applies only to cheating. Then came the provisions of the statute of Anne, and in so far as it made all bills and securities given for money lost at illegal games void, the subsequent statute of 5 & 6 W. 4, c. 41, repealed its provisions, and enacted that such securities shall only be considered as having been given for an illegal consideration. The late statute 8 & 9 Vict. c. 109, s. 15, repeals the whole of the statute of Anne, except in so far as it was altered by the statute 5 & 6 W. 4, c. 41, and the question, therefore, now is, whether or not the present contract falls within the proviso of the 18th section of the 8 & 9 Vict. c. 109, and it is submitted that it does, and that the contract was perfectly valid. The latter act, as appears from the recital, had two objects, the one to restrain unlawful gaming, and the other to remove all undue restrictions from games of skill. Where the whole of the sum subscribed for by any number of persons is to go to the

winner of a lawful game, then the wager is a legal one, and the stake cannot be recovered back. The following cases were referred to:—*Clayton v. Jennings*, 2 W. Bl. 706; *Evans v. Pratt*, 4 Scott, N. R. 378; *Challand v. Bray*, 1 Dowl. N. S. 783; *Bentinck v. Connop*, 5 Q. B. 693; *Applegarth v. Colley*, 10 M. & W. 723; *Emery v. Richards*, 14 M. & W. 728.

Wilde, C. J. We must look, in construing the statute 8 & 9 Vict. c. 41, to what is its plain and reasonable meaning; and the first question is, whether a foot-race is now a lawful game or not. To show that it is unlawful the provisions of the statute of Anne have been offered, but then it has been contended in answer that the statute of Anne is repealed, and I think it is repealed in so far as the present question is concerned. Then what is the effect of the 18th section of 8 & 9 Vict., c. 41, in respect of the wager in the present case? Now the difficulty in giving effect to the proviso in that section is to say where persons subscribe a "sum of money to be awarded to the winner or winners," &c., in what does that differ from a wager, and by the enactment part of the section all wagering contracts are made null and void. Considering, however, the state of society, and the persons who are to be found amongst those who form the legislative body, one can hardly doubt the meaning of the section. It is quite clear that horse-racing was not intended to be put down, and yet most of ~~these~~ races are match races, and clearly a wager between the two persons betting. Are they not then taken out of the operation of the enacting part of the section by the proviso? In the present case there are two sums to be contributed by two persons, to be awarded to the winner of a lawful game, and the contract, therefore, comes distinctly within the terms of the proviso. That being so, the plaintiff who paid his money under a certain valid contract cannot be allowed to rescind his contract and get back his money, even though the event had not been decided, as in the present case the evidence shows that it had.

Coltman, J. The foot-race, I think, is a lawful game, and that the statute of Anne, in so far as it concerns the present case, is repealed. It is certainly an anomaly that if a promissory note or other security were given for the stake, the consideration would be illegal under the provisions of the 5 & 6 W. 4. c. 41, and the winner could not, as here, obtain the amount. But still that cannot affect the result of the present case. Then, as to the construction of the 8 & 9 Vict. c. 109, s. 18, the proviso was intended to except cases where parties contributed to a sweepstakes, which was probably the main thing in the contemplation of the persons who framed the act, and undoubtedly that was very much in the nature of a wager, and the present case, I think, also falls within that proviso.

Cresswell, J. This question rests upon the common law and the statute 8 & 9 Vict. c. 109. At common law a foot-race was a lawful game, and the statutes which are supposed to make it

unlawful are now repealed. Then comes the 18th section of the 8 & 9 Vict. c. 109, which is the only one against wagering, and it is manifest that the proviso in that section is intended to protect something which otherwise would be affected by the earlier part of the section. Now this is a contribution or subscription "towards a sum of money, to be awarded to the winner," &c., and there is no express limit in the proviso as to the number, nor can any limit be put by implication. Certainly the first impression was that it did not apply to a case where a party engaged in the sport himself was a contributor, but it is impossible to say that such a case is not within the words; for though but two persons pay their money for a piece of plate or prize, do they not contribute just as much as if there had been others? Besides this, there is also the introduction of the words "sum of money;" and upon the whole, I do not see how we can exclude the transaction in the present case from the benefit of the proviso.

Williams, J., concurred.

Rule absolute.

Exchequer.

In re Lenneghan. May 8 & 11, 1848.

COUNTY COURTS.—PROHIBITION AFTER EXECUTION.—SERVICE OF SUMMONS.

Under the stat. 9 & 10 Vict. c. 95, s. 80, the due proof of service of summons necessary to the jurisdiction of the County Court, means proof to the satisfaction of the judge only.

This Court will not grant a prohibition to a County Court where execution has been executed in pursuance of the judgment of such Court, upon proceedings in which the defendant has not been served with process, and does not appear, there having been some evidence of service given upon the trial.

IN this case a plaint had been entered in the County Court of Clerkenwell for 4*l.* 14*s.* 6*d.*, in which Mr. Lenneghan was defendant, and the Bailiff of the Court left a summons for him at 8, St. Paul's Terrace, Islington, although at the time of leaving such summons he was informed that no such person resided there. Mr. Lenneghan resided at 8, Highbury Villas, Islington. The cause came on to be heard, and the bailiff having proved service, the proceedings went on to judgment, and on the 13th January last, a person took possession under an execution. On the 14th January, application was made to the County Court by counsel to set aside the proceedings, when an order was made that, upon Mr. Lenneghan undertaking to bring no action against the officer of the Court, the judgment be set aside. Mr. Lenneghan declined to accede to the terms of bringing no action, and on the 19th January paid the debt and cost, under protest. On the 31st January,

Willes obtained a rule calling on the judge

of the County Court to show cause why a writ of prohibition should not issue to restrain all proceedings under the County Courts Act, and why the money paid under protest should not be refunded to the said Lenneghan or his attorney.

Brown showed cause against the rule on 8th May. The plaintiff in his affidavit swore that he believed there was no defence to the action upon the merits; that Lenneghan was outside the Court at the time the cause was heard, but did not choose to go in. On the part of Lenneghan there was no affidavit of a defence upon the merits. This rule had been obtained upon the statement of a case in reference to the Palace Court, in which it was said a similar rule had been obtained, and also upon the case of *Ferguson v. Mahon*, 11 Ad. & E. 179. This case was certainly no authority in favour of the prohibition, and upon reference to the statute constituting the County Courts, it will be found that this Court has no authority so to interfere. This is not the proper mode of taking advantage of the objection. This application is after execution executed: there is nothing more remaining to be done by the County Court, and therefore there is nothing which can be prohibited; and certainly this Court has no authority to make any order for the money to be returned. In *The Dean of York's Case*, 2 Q. B. 12, the objection taken was, that the application was too late, and it was then said, "There has been much discussion in this Court respecting the different grounds of prohibition which are available respectively at different steps of the ecclesiastical proceeding: *Gould v. Copper*, (5 East, 345,) is a leading case on the point. Here nothing remains to be done: the sentence of deprivation has been passed, and there is nothing to prohibit." [*Parke*, B. That is the argument.] Yes, but upon reference to the case in which prohibitions have been granted to the Ecclesiastical Courts, it will be found that although they have been granted after judgment, yet the parties must in all cases have applied for and obtained the prohibition before execution: and in this case the application should have been before execution, or before the money was paid to the officer of the Court: Mr. Lenneghan had an opportunity of coming here before the payment and while the money was in hand, and it makes no difference that the money was paid under protest. The cases in the books of prohibition are all like that of the *Dean of York*, which is distinguishable from the present; there it was observed in the judgment "on looking at the sentence, we find that it admonishes the Dean not to exercise the functions of Dean on pain of the greater excommunication, and that the Court was adjourned only when this notice was made. The infliction of that pain would be the mode of enforcing the sentence, and this we may prohibit." In this case there remains nothing more to be done by the County Court, unless it may perhaps be said that the money is not yet paid over to the plaintiff. But there are

authorities that a prohibition cannot issue after execution executed; *In re Poe*, 5 B. & Ad. 681, which was an application for a prohibition to restrain the execution of the sentence of a court-martial, Lord Denman, C. J., observes, "We could not understand why and to what end a prohibition should be granted, nor to whom it could be directed, nor what it could prohibit, for not only had the sentence been carried into complete execution, but the court-martial itself having performed all its functions had ceased to exist." And in another part of the same judgment, his lordship says, "We desired to be furnished with some authority (if any could be found) for granting a prohibition after complete execution of the sentence imposed by the Superior Court; and several cases were at a subsequent day laid before us; none of which, however, on examination, appears to us to establish the proposition, while others are examples of acting on the contrary doctrine. In *Hale v. Norwood*, (1 Sid. 166,) the Court held, that a motion for a prohibition came too late after judgment and execution in the Court below, because there is no person who can be prohibited. And a similar view is taken in *Darby v. Cosins* (1 T. R. 552), by *Ashurst* and *Buller*, J. J., the only judges in Court, who support the prohibition, on the ground that something remained to be done." He certainly should not weary the Court by stating the old cases of prohibitions, but this distinction was observed throughout the whole of them: that the only cases in which prohibitions were granted were cases when the sentence was of a continuing character, "when something remained to be done." As to the other part of the rule, upon reference to the statute this would be found not to be the way to take the advantage. No prohibition will lie until it be shown that there was something improper in the proceedings of the Court below; in this case it does not appear that there was any impropriety in the proceedings; here the judge did nothing more than he was bound to do, to give judgment upon proof of service of the process, and this, though the person serving the process should have sworn falsely. The 79th and 80th sections of the statute (the 7 & 8 Vict. c. 95) are the important ones in reference to the appearance of the parties to the cause: the 79th section applies to proceedings when the plaintiff does not appear: the 80th section provides, that if the defendant shall not appear, &c., the judge upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended." If then the bailiff swears falsely, the judge is nevertheless bound by the statute to give judgment in conformity with the statute, and such judgment is as valid and binding as if the defendants had appeared. Then it might be said to be strange if there

* See note (c.) to that case, at p. 687. Where the learned reporter suggests a doubt whether a court-martial is determined as there said.

was no remedy, but a remedy was provided by the 81st section, which provides, that a judge may make orders for granting time to a defendant to proceed in the defence of the suit and may adjourn the hearing or further hearing of any cause in such manner as he may think fit. In this case the judge thought fit to make an order to set aside the proceedings, upon an undertaking to take no proceedings against the officer; and Mr. Lenneghan now contends that he has a right *ex debito justitiæ* to have the proceedings set aside without any terms whatever, and there is no doubt in this Court such proceedings would have been set aside without terms: but the judge of the County Court had a right to exercise his discretion in the matter.

This cause was further heard on the 10th May, when

Brown mentioned that a case had been decided in the Queen's Bench directly in his favour. He was then stopped by

The Court, who called upon Mr. Willes in support of the rule.

Willes. The case in the Queen's Bench was not a case in which there had been no notice, but in which the notice was insufficient. In this case no notice whatever was served upon the defendant. [Pollock, C. B. This does not depend upon the question whether a party has been served, but whether the judge of the County Court had before him such evidence as to his mind amounted to proof of service. If a prohibition were to be granted in cases of this sort, this difficulty would arise, that the Courts of Westminster would become Courts of Appeal on questions of fact entirely in the disposal of the County Courts. The statute gives us no such power—no right to interfere in the matter at all.] Suppose a case called on in the County Court, and the judge refusing to hear evidence on the part of the defendant, the Court would not surely in such a case refuse to interfere. In the *Dean of York's* case the mode of enforcing the sentence remained to be carried out, and the Court then granted a prohibition. In the present case the money having been paid under a protest, is merely lodged in the hands of the officer of the Court. [Platt, B. The money in this case has been paid to the officer of the Court, and most probably to the plaintiff, so that I do not see what we have to prohibit. Parke, B. The question is, whether the County Court had jurisdiction to do what it did, not whether the application for a prohibition comes too late. It will appear that they had jurisdiction, unless the 80th section of the 9 & 10 Vict. c. 95, can be removed from that statute.] The 80th section states, that if on the day named in the summons the defendant shall not appear, the judge, upon *due proof of service*, may proceed with the cause; and the question is, whether, under that section, the judge of a County Court can proceed when the defendant has had no notice. Blackstone, in the 4th volume of his Commentaries, p. 279, says, that our own common law never suffers any fact (either civil or criminal) to be tried till it has previously

compelled an appearance by the party concerned; this being so, it being necessary at common law that a person should appear before he could be proceeded against, the 80th section merely does away with the absolute necessity of an appearance, and did not intend to abolish the right of the defendant to have notice before the Court proceeded against him. *Ferguson v. Mahon* is directly in point to show that proceedings against an absentee are void; and *In re Poe* the Court was dissolved, so that there was no person to whom a prohibition could issue. He submitted there might be a prohibition after execution had, and the reason of some decisions apparently to the contrary appears in *Buggin v. Bennett*, 4 Burr. 2037; there Lord Mansfield says, "If it appears upon the face of the proceedings that the Court below have no jurisdiction, a prohibition may be issued at any time either before or after sentence, because it is a nullity,—it is *coram non judice*. But when it does not appear upon the face of the proceedings, if the defendant below will lie by and suffer that Court to go on under an apparent jurisdiction, it would be unreasonable that this party who when defendant below has thus lain by and concealed from the Court below a collateral matter, should come hither after sentence against him there, and suggest that collateral matter as a cause of prohibition, and obtain a prohibition upon it after all this acquiescence in the Court below. Now here is nothing upon the face of these proceedings which shows that the Admiralty Court acted without jurisdiction, or that what they did was *coram non judice*. In the case of *Howe v. Nappier*, the application for a prohibition was before sentence, this is after sentence and upon a collateral matter." This case explained the apparently conflicting authorities, and coincides with the decision of *Alderson, B.*, in *Roberts v. Humby*, 3 M. & W. 120, who there says, "I think a writ of prohibition may be granted even after execution. All the cases where it has been held otherwise will be found to have turned on the acquiescence of the party." And the 2nd Coke's Inst. 602, is cited by that learned judge in the same judgment as an authority that a prohibition may issue after execution. Another authority is Fitz. N. B. 46. When speaking of prohibitions to be had, it says,—"And so after judgment given and execution awarded in the County or in other Court Baron which hath not power to hold plea of debt of the sum of 40s., &c., or of damages in trespass amounting to such sum or more, the party defendant shall have a writ of prohibition unto the bailiffs, or unto the sheriff or officer of the Court, that they do not execute; and if they have distrained, the party to make satisfaction, that then they release the distress, and that they revoke what they have done therein." These authorities appeared to him conclusive, and this case might be reconciled with all the existing authorities by holding that the statute did not dispense with a service, but merely waived the necessity of an absolute appearance.

Pollock, C. B. I am of opinion this rule ought to be discharged. The construction of the act of parliament is this: the Court shall have jurisdiction wherever due proof is given to the judge of the service of the process, and the act constitutes him the judge of what is due proof. The words "due proof" must not be understood as "absolute proof," but such proof as is sufficient to satisfy the mind of the judge that service has been effected. In this case evidence was given of the service, that evidence being satisfactory to his mind, it gave him jurisdiction, and we have no power to interfere.

Parke, B. The statute puts the judgment of the County Court upon the same footing as that of a Superior Court. The parties have the power of appealing to the County Court to set aside any judgment improperly obtained, and if the application be refused the judgment is binding. If this rule were to be granted, we should be having applications made in numberless cases.

Rolfe, B., concurred.

Platt, B. It is a matter entirely in the discretion of the judge, whether the proper notice has been proved. The case in *Fitz. N. B.*, is distinguishable from this case, because the position there put is, when the goods distrained have not been fairly disposed of at the time of the application. In this case everything to be done by the Court is completed.^b

Rule discharged with costs.

^b In the *Dean of York's* case, 2 Q. B. 40, the Court in giving judgment upon the argument, "that nothing remained which the Court could prohibit, and that there was no continuing Court to which the writ could be addressed," and which argument was sanctioned by the judgment in *re Poe*, observed, "These arguments, for obvious reasons, required to be narrowly watched, for they would give effect to unlawful proceedings, merely because they were brought to a conclusion."—REPORTER.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF PROPERTY AND CONVEYANCING.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.]

ANNUITY.

See *Vendor and Purchaser*, 5.

BIDDINGS AT SALE.

See *Sale*, 3.

COMMON LANDS.

In 1784, a certain tenement and four acres, and one acre and a-half of land dispersed in the common field of *A.*, were to be conveyed to the party under whom the vendor claimed. In 1818, the devisee of the same party conveyed the tenement, with an allotment of land described as containing three acres and one rood, allotted to the devisor under an act passed in 1801, for enclosing part of the parish of *A.*, in lieu of 5 acres of common field lands. The estate was contracted to be sold in 1841: *Held*, that in the absence of any proof that the whole of the common lands in *A.* had not been allotted, or that any other allotment had been made to the same party, the Court would assume that the allotment had been made in substitution of the common lands comprised in the deed of 1784. *Major v. Ward*, 5 Hare, 604.

CONTINGENT REMAINDER.

A devise of real estate to the use of *A.* for

life, with remainder to the use of all and every the child or children of *A.* who shall attain the age of 21 years, and for want of such issue, over, creates a tenancy for life in *A.*, with a contingent remainder in fee to such of the children of *A.* as shall attain 21; and on the death of *A.*, having infant children, but having had no child who had then attained 21, the interest of the children of *A.* was divested, and the limitations over were defeated. *Festing v. Allen*, 5 Hare, 573.

Cases cited in the judgment: *Hanson v. Graham*, 6 Ves. 239; *Muy v. Wood*, 3 Bro. C. C. 471; *Ackerley v. Vernon*, 1 P. Wms. 783; *Boddy v. Duwes*, 1 Keen, 362; *Saunders v. Vantier*, 1 Cr. & Ph. 240; *Vawdry v. Geddes*, 1 Russ. & M. 208; *Lister v. Bradley*, 1 Hare, 10; *Crickett v. Dolby*, 3 Ves. 10; *Hearle v. Greenbank*, 3 Atk. 697, 716.

CONVEYANCE.

See *Vendor and Purchaser*, 1.

COPYHOLDER.

Covenant.—Lease.—A copyholder agreed to demise a tenement within the manor for 63 years on a building lease, and, as the custom did not allow the lease to be made for more than 21 years, the copyholder agreed to execute a lease for 21 years, with a covenant for himself, his heirs, and assigns, to renew the lease for a further term of 21 years at the expiration of the first, and for a further term of 21 years at the expiration of the second term. The copyholder died before the lease was executed, having devised the premises to a trustee: *Held*, on a bill by the lessee against the trustee for specific performance, that the trustee, having no beneficial interest in the estate, was not bound in the lease for 21 year

to enter into any other covenant for the renewal of the lease at the expiration of that term, and that he could only be required to covenant against his own acts.

Quære, whether, if the trustee had brought in his bill for specific performance against the lessee, the lessee could have been compelled to perform the contract, if the trustee had declined to covenant for renewal. *Worley v. Frampton*, 5 Hare, 560.

INTEREST ON PURCHASE-MONEY.

Not subject to deduction for income tax.—Where interest is payable on purchase-money upon a sale by order of the Court, the purchaser must pay the full purchase-money and interest into Court, without deducting the income tax. *Holroyd v. Wyatt*, 1 De G. & S. 125.

JOINT TENANCY.

Severance.—Two women, being joint tenants of copyhold lands, one of them and her husband surrendered their estate and interest to the intent that the lord should regrant the same to such person or persons as the husband should by will appoint. The wife died in the lifetime of her husband and siter. The husband afterwards died, having, by his will, appointed the surrendered share to his executors: *Held*, that there was a severance of the joint tenancy. *Edwards v. Champion*, 1 De G. & S. 75.

LEASE.

See *Copyhold; Specific performance*, 2.

LIEN.

See *Vendor and Purchaser*, 5.

MARRIAGE SETTLEMENT.

Whether, after the execution of a marriage settlement, which is not executory, the husband and wife have power before the solemnization of the marriage to revoke it, *quære*.

On the 14th March, in contemplation of a marriage, a mortgage in fee was conveyed to trustees, on certain trusts for the intended wife, husband, and the issue of the intended marriage. On the 27th March, the husband and wife revoked it. Upon a bill by the husband, claiming the mortgage *jure mariti*, the Court referred it to the Master to inquire under what circumstances the revocation has been executed. *Page v. Horne*, 9 Beav. 570.

MINES.

See *Sale*, 2.

MORTGAGE.

1. *Tacking.*—*Notice.*—*A.*, having mortgaged an estate to *B. & C.* in succession, agreed to sell it to *D.* free from incumbrances: part of the purchase-money was to be paid down, and the rest on the completion of the purchase. During the investigation of the title, *A.* induced *D.*, who was ignorant of the mortgages, to make further payments on account of the purchase-money, and having also raised a further sum from *E.* on the security of his tract, without giving him notice of *C.*'s

gage, became insolvent and absconded. *A.* thereupon, with notice of all that had happened, paid off *C.*'s mortgage out of the balance of the purchase-money remaining due, and *E.*, to secure himself, took an assignment of *B.*'s mortgage. But the balance of purchase-money not being sufficient to pay both *E.*'s charge and what *E.* had paid to *B.*, *Held*, reversing the judgment below, that *E.* was not entitled to tack his security to *B.*'s mortgage, 1st, because his security was not a security on the estate, but only on the purchase-money; and 2ndly, because, although *E.* at the time he advanced his money had no notice of any particular incumbrance on the estate except *B.*'s, he knew that he was dealing for a supposed balance, out of which *D.*, having contracted to sell the estate free from incumbrances, would be entitled to pay off any incumbrances to which the estate might be found to be subject, and therefore the equities of *D.* and *E.* were not equal. *Lacey v. Ingle*, 2 Phill. 413.

Cases cited in the judgment: *Bruce v. Duke of Marlborough*, 2 P. W. 491; *Exparte Knott*, 11 Ves. 617.

2. *Occupation rent.*—*Redemption.*—In a suit to redeem against a mortgagee in possession, the Court will not direct the Master to fix and charge the defendant with an occupation rent, unless the defendant alleges and shows, not only that the defendant has been in possession of the mortgaged estate and in receipt of the rents and profits of it, but also, that he has been in the actual occupation of it, or of part of it. *Semble.* *Trulock v. Robey*, 15 Sim. 265.

3. *Creditors.*—*Notice.*—Stephen took a conveyance of an estate from William, his father, and then mortgaged the estate, with a power of sale on default of payment of the mortgage money and interest, within three months after notice, in writing, given to Stephen, his heirs, executors, administrators, or assigns, or left at his or their usual or last known place of abode. The conveyance to Stephen from William was afterwards declared void, as against the creditors of William. Some years afterwards, the mortgagee caused the notice demanding payment to be affixed to the door of the house which was the last known place of abode of Stephen; and, three months before the expiration of the three months, entered into a contract for the sale of the property: *Held*, that as the right of the mortgagee under power of sale was paramount to that of the creditors of William, the notice was sufficient.

That such notice was well served by being affixed on the door of Stephen's last known place of abode. That the contract for sale of the property, although made before the expiration of the notice, was not therefore invalid. *Major v. Ward*, 5 Hare, 598.

See *Notice of Prior Charge; Specific Performance*, 1.

NOTICE OF PRIOR CHARGE.

Indefinite as to amount.—Notice of a charge to an indefinite amount, although the notice be inaccurate as to the particulars or the extent of

the charge, is sufficient to put upon inquiry a party dealing for the property subject to the charge; and if the actual charge afterwards appears to be incorrectly described in the notice, it is nevertheless sufficient, as a ground for giving priority for the true amount of the charge, as against the party who received the incorrect notice, but made no inquiry. *Gibson v. Ingo*, 6 Hare, 124.

Case cited in the judgment: *Taylor v. Baker*, 5 Price, 306.

See *Mortgage*, 1, 3; *Vendor and Purchaser*, 3.

REDEMPTION.

See *Mortgage*.

REMAINDER-MAN.

Recovery suffered by fraud upon tenant in tail.—Transactions good in part, and bad in part.—*Seem*, if a fraud has been committed on a tenant in tail, which has been carried into effect by means of a recovery, and the tenant in tail dies without issue and without confirming the transaction, the next remainder-man in tail may maintain a bill to set it aside. *Secus*, if the recovery were suffered with the intention of barring the entail, and the fraud applied only to some part of the transaction independent of that object. *Bellamy v. Sabine*, 2 Phill. 437.

SALE,

1. "Without reserve."—Where property is advertised to be sold "without reserve," such advertisement is understood to exclude any interference by the vendor, either direct or indirect, which can, under any possible circumstances, affect the right of the highest bidder, whatever may be the amount of the bidding, to be declared the purchaser; and any evasion of that engagement on the part of the vendor, being a violation of his contract with the public, will disentitle him to the aid of a Court of Equity to enforce the sale.

Therefore, where previously to a sale of a life interest, which was advertised to be "without reserve," the vendor entered into a private agreement with another person, that the latter should bid a certain sum at the auction, and be the purchaser at that sum, unless a higher sum were bid, a bill by the vendor for specific performance against a third party, who had been declared the purchaser at the auction, though for a much higher price, was dismissed. *Robinson v. Wall*, 2 Phill. 372.

Case cited in the judgment: *Meadows v. Tanner*, 5 Madd. 34.

2. *Shares in mines.*—Title and evidence of title.—On a contract for the sale of a share in a mine described as "one 192nd part of $\frac{1}{2}$ share of the Fresavean mine, in the district of Gwennap, in the county of Cornwall," it is not sufficient for the vendor to shew a title to the specified share of the mine as between himself and his co-adventurers, without showing some title in himself and his co-adventurers to the mine of which he had contracted to sell a share. As to the title he must show, *quere*. *Carling v. Flight*, 6 Hare, 41.

3. *Opening biddings.*—Motion by rejected bidder to set aside the sale for irregularity.—A bidder at a sale under the decree of the Court, who is not a party to the cause or interested in the estate which is the subject of the sale, has no right to apply to the Court to set aside a sale to another bidder, on the ground of irregularity in that the latter, although reported the purchaser, was not in fact the highest bidder. Whether he may apply to be declared the purchaser in the place of the bidder reported to be the best purchaser, *quere*? *Hughes v. Lipscombe*, 6 Hare, 142.

SEVERANCE.

See *Joint Tenancy*.

SHIP

Lien of master or ship-broker.—There is nothing in the character or nature of the certificate of registry of a ship which excludes it from the jurisdiction of the Court to decree its delivery as against a party unlawfully detaining it. The master of a ship has no lien on the certificate of registry, either for his wages or for monies disbursed by him for the use of the ship; nor have the ship-brokers any lien on the certificate of registry for advances made by them to the owner for the use of the ship.

The master of a ship has no claim on the accruing freight, either for his wages or for monies disbursed by him for the use of the ship.

Shipowners advancing monies to the owner of a ship for the ship's use, having at the same time notice (by an indorsement on the certificate of registry) of a prior mortgage on the ship, are not entitled to be repaid their advances out of the freight in priority to the mortgagee, although the mortgagee does not take possession of the ship until after she has entered the docks from her homeward passage.

The vendor of a ship with a covenant for title, retains, after the sale, (in order that he may fulfil his contract and defend himself against an action brought upon his covenant,) such an interest in the certificate of registry as enables him to sustain a suit for its delivery against a party unlawfully detaining it. *Gibson v. Ingo*, 6 Hare, 112.

Case cited in the judgment: *Splitd v. Bowles*, 10 East, 279.

SPECIFIC MORTGAGE.

1. *Mortgage.*—A. mortgaged three houses (23, 26, and 27,) to B., and afterwards contracted to sell 23 (one of the houses) to C.; C. paid the purchase-money to A. under the contract, but without obtaining a conveyance, and with constructive notice of the prior mortgage to B. C. afterwards paid off what was due to B. upon his mortgage, and having taken a transfer of the mortgage, filed a bill against the devisees of A. and several mortgagees, under subsequent mortgages made by A., which included the houses 26 and 27, and other property, and obtained a decree for the specific performance by the devisees of A. of the contract of sale as to the house 23, and for the successive foreclosure of all the subsequent

mortgages, and the devisee of A., in default of their redemption of the houses 26 and 27. *Sober v. Kemp*, 6 Hare, 155.

2. *Lease.—Agreement by trustees beyond their powers.*—Bill for the execution of a covenant contained in a renewed lease granted by trustees dismissed; the covenant being *ultra vires* of the trustees. *Bellringer v. Blagrace*, 1 De G. & S. 63.

Cases cited in the judgment: *Mortlock v. Buller*, 10 Ves. 292; *Ord v. Noel*, 5 Madd. 438.

See *Vendor and Purchaser*, 3.

TACKING.

See *Mortgage*, 1.

TENANT IN COMMON.

One of two tenants in common of a farm, permitted the other to occupy and cultivate it, without demanding any rent or other remuneration from him; but, after his death, claimed compensation out of his estate.

The Vice-Chancellor allowed the claim, but the Lord Chancellor, on appeal, doubted whether it could be maintained, and directed an action to be brought. *Henderson v. Eason*, 15 Sim. 303.

TENANT IN TAIL.

See *Remainder-man*.

See *Sale*, 2.

VENDOR AND PURCHASER.

1. *Parties to conveyance.*—It being one of the terms of a contract between vendor and purchaser, that certain parties were to join in the conveyance, the Court would not enter into the question, whether they were necessary or proper parties. *Benson v. Lamb*, 9 Beav. 502.

2. *Time, essence of contract.*—Though time may not be of the essence of the contract, yet, upon unreasonable delay on the part of a vendor in completing, the purchaser, upon giving notice, may rescind the contract. *Benson v. Lamb*, 9 Beav. 502.

3. *Priority.—Specific performance.*—If a

vendor contracts with two different persons for the sale to each of them of the same estate, the Court will, *prima facie*, enforce the contract which was first made; and if the party with whom the second contract was made, should, after notice of the first contract, procure a conveyance of the legal estate in pursuance of the second contract, the Court will, in a suit for specific performance by the first purchaser against the vendor and the second purchaser decree the latter to convey the estate to the plaintiff. *Potter v. Sanders*, 6 Hare, 1.

4. *Time of contract.—Letters through the post.*—A purchaser offered a price for an estate, and the vendor, by a letter sent by post and received by the purchaser the day after it was put into the post-office, accepted the offer: *Held*, that the vendor was bound by the contract from the time when he posted the letter, although it was not received by the purchaser until the following day. *Potter v. Sanders*, 6 Hare, 1.

5. *Annuity.—Lien.*—Sale and assignment of a life interest in leaseholds, in consideration of a weekly sum to be paid to the vendor during her life, with a covenant by the purchaser for himself, his heirs, executors, and administrators, to make the weekly payment to the vendor, and to repair and insure the premises, and otherwise perform the covenants in the lease: *Held*, that the vendor was entitled to a lien on the life interest in the leaseholds, which was the subject of the assignment, for the weekly payment. *Matthew v. Bowler*, 6 Hare, 110.

Case cited in the judgment: *Turdiffe v. Scrugham*, 1 Bro. C. C. 423.

6. *Mistake.*—Where, by the mutual mistake of vendor and purchaser as to the duration of a leasehold interest, it had been sold at a price considerably below its value, and the conveyance had been executed, and the purchaser let into possession: *Held*, upon a bill filed some years afterwards by the vendor against the representatives of the purchaser, that the vendor was not entitled to be relieved against the mistake. *Okill v. Whittaker*, 1 De G. & S. 83.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

Lord Chancellor.

Trinity Term, 1848.

AT WESTMINSTER.

| | |
|-----------------------|---|
| Friday . . . May 26 | } Appeal Motions and Appeals. |
| Saturday . . . 27 | |
| Monday . . . 29 | } (The Petition-day) Petitions and Appeals. |
| Tuesday . . . 30 | |
| Wednesday . . . 31 | } Appeals. |
| Thursday . . . June 1 | |
| | } Appeal Motions and Appeals. |
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| Friday . . . 2 | } Appeals. |
| Saturday . . . 3 | |
| Monday . . . 5 | |
| Tuesday . . . 6 | |
| Wednesday . . . 7 | } Appeal Motions and Appeals. |
| Thursday . . . 8 | |
| Friday . . . 9 | } (Petition-day) unopposed Petitions only and Appeals. |
| Saturday . . . 10 | |
| Monday . . . 12 | } Appeals. |
| Tuesday . . . 13 | |
| Wednesday . . . 14 | } (Petition-day) unopposed Petitions only and Appeals. |
| Thursday . . . 15 | |

Friday 16 } Appeal Motions and Appeals.

N. B.—Such days as his Lordship sits in the House of Lords excepted.

Master of the Rolls.

AT WESTMINSTER.

Friday . . . May 26 Motions.
 Saturday 27 } Pleas, Demurrers, Causes, Exceptions, and Further Directions.
 Monday 29 Petitions in General Paper.
 Tuesday 30 } Pleas, Demurrers, Causes, Exceptions, and Further Directions.
 Wednesday . . . 31 }
 Thursday . . . June 1 Motions.
 Friday 2 }
 Saturday 3 } Pleas, Demurrers, Causes, Further Directions, and Exceptions.
 Monday 5 }
 Tuesday 6 }
 Wednesday 7 }
 Thursday 8 Motions.
 Friday 9 }
 Saturday 10 } Pleas, Demurrers, Causes, Exceptions, and Further Directions.
 Monday 12 }
 Tuesday 13 }
 Wednesday 14 }
 Thursday 15 Petitions in General Paper.
 Friday 16 Motions.

Short Causes, Consent Causes, and Consent Petitions, on Saturday June the 3rd and Saturday June the 10th, at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

AT WESTMINSTER.

Friday . . . May 26 Motions.
 Saturday 27 The Queen's Birth-day kept.
 Monday 29 (Petition-day).
 Tuesday 30 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Wednesday . . . 31 }
 Thursday . . . June 1 Motions.
 Friday 2 } Short Causes, Petitions by order, and Causes.
 Saturday 3 }
 Monday 5 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 6 }
 Wednesday 7 }
 Thursday 8 Motions.
 Friday 9 } (Petition-day,) Petitions, (unopposed first,) Short Causes, and Causes.
 Saturday 10 }
 Monday 12 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 13 }
 Wednesday 14 }
 Thursday 15 } (Petition-day,) Petitions, (unopposed first,) Short Causes, and Causes.
 Friday 16 Motions.

Vice-Chancellor Knight Bruce.

AT WESTMINSTER.

Friday . . . May 26 Motions.
 Saturday 27 The Queen's Birth-day kept.
 Monday 29 } (Petition-day) Petitions and Causes.
 Tuesday 30 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Wednesday . . . 31 } Bankrupt Petitions and Ditto.
 Thursday . . . June 1 Motions.
 Friday 2 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Saturday 3 Short Causes and Causes.
 Monday 5 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 6 }
 Wednesday 7 } Bankrupt Petitions and Ditto.
 Thursday 8 Motions and Causes.
 Friday 9 } (Petition-day) Petitions and Causes.
 Saturday 10 Short Causes and Causes.
 Monday 12 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 13 }
 Wednesday 14 } Bankrupt Petitions and Ditto.
 Thursday 15 } (Petition-day) Petitions, Short Causes, and Causes.
 Friday 16 Motions.

Vice-Chancellor Stigand.

AT WESTMINSTER.

Friday . . . May 26 Motions and Causes.
 Saturday 27 The Queen's Birth-day kept.
 Monday 29 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 30 }
 Wednesday . . . 31 }
 Thursday . . . June 1 Motions and Ditto.
 Friday 2 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Saturday 3 } Short Causes, Petitions, (unopposed first,) and Causes.
 Monday 5 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 6 }
 Wednesday 7 }
 Thursday 8 Motions and Ditto.
 Friday 9 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Saturday 10 Short Causes and Ditto.
 Monday 12 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 13 }
 Wednesday 14 }
 Thursday 15 } Short Causes, Petitions, (unopposed first,) and Causes.
 Friday 16 Motions and Causes.

CHANCERY CAUSE LIST.

Lord Chancellor.

Trinity Term, 1848.

APPEALS.

| | | | |
|--------|-----------------------|--------------------------|------------|
| S. O. | { Hodgkinson | Hodgkinson | } appeal |
| | { Ditto | Jackson | |
| Af. T. | Tm. Allfrey | Allfrey, | ditto |
| S. O. | { Wilson | Wilson | } appeal |
| | { Ditto | Ditto | |
| | { Ditto | Foster | } ditto |
| | { Cunningham | Murray | |
| | { Ditto | Hay | } ditto |
| | { Ditto | Murray | |
| | { Lawrence | Ditto | } ditto |
| | { Watts | Hyde, cause by order | |
| | { Birch | Joy, 4 causes | appeal |
| | { Joy | Birch | } ditto |
| | { Sturgis | Ditto | |
| | { St. Victor (pauper) | Devereux | ditto |
| | { Raud | McMahon | } ditto |
| | { Ditto | Hiscox | |
| | { Ditto | Boddington | } ditto |
| | { Clarke | Wyburn | |
| | { Forbes | Herring | ditto |
| | { Raven | Kerl | ditto |
| | { Urch | Walker | } ditto |
| | { Ditto | Hearse | |
| | { Phelps | Protheroe | ditto |
| | { El. Chesterfield | Duncombe | ditto |
| | { Humble | Shore | ditto |
| | { Hiles (pauper) | Moore | ditto |
| | { Carter | Barnard | ditto |
| | { Flight | Marriott, fur. dirs. and | } [costs.] |
| | { Attorney-Gen. | Monro | |
| | { Ditto | Bannerman | appeal. |
| | { Ditto | Makant | } ditto |
| | { Mapp | Elcock | |
| | { Robinson | Robinson | ditto |
| | { Hobson | Eve rett | } ditto |
| | | auses | |
| | { Edwards | Salloway | ditto |
| | { Skipper | King | ditto |

Master of the Rolls.

Trinity Term, 1848.

JUDGMENTS (reserved.)

Master v. Marquis de Croismare, fur. dirs. and costs.

Fisher v. Price, exons.

Smith v. Earl of Effingham, as to costs.

{ Rice v. Gordon }
 { Same v. Scarnett } cause.
 { Same v. Gordon }
 { Carter v. Gordon }
 { Same v. Ayers }
 { Peacock v. Penson } cause.
 { Same v. Same }

Wilson v. Eden, fur. dirs. & costs.

PLEAS AND DEMURRERS.

Stand over, Dean of Ely v. Gayford, six pleas

CAUSES.

{ Hele v. Bexley }
 { Same v. Same }
 { Same v. Same }
 { Same v. Howyer }
 { Same v. Donovan }

Part heard, Michaelmas Term { Churchman v. Capon, fur. dirs. and costs. }
 { Same v. Same, suppl. }

To present petition, Stourton v. Jerningham.

First cause day after Term, Hooper v. Deacon.

S. O. to amend, Williamson v. Gordon.

Short, { Murray v. Scarborough } fur. dirs. and M. T. } Same v. Crafton } costs.

S. O. till petn. of rehearing disposed of { Hemming v. Archer }
 { Same v. Same. } fur. dirs. and costs.
 { Same v. Same. }
 { Raworth v. Same. }

{ Knight v. Majoribanks }
 { Same v. Same }
 { Same v. Gibbs. }

Hooper v. Salmon.

Tugwell v. Hooper

Hilary Term, 1849, M^cMichael v. Kipling, exons. and petition.

First cause day after term, Philipe v. Watkins, pro confesso.

Part heard M. Tm. { Hemming v. Archer }
 { Same v. Same } Re-hearing.
 { Same v. Same }
 { Same v. Same }
 { Raworth v. Archer }

Part heard, 1st cause day, Petre v. Petre.

Part heard, 1st cause day, Chancellor v. Morecraft.

Part heard, Gallafent v. Brown.

Part heard, Attorney-General v. Ward, exceptions, 2 sets.

Attorney-Gen. v. Ward, fur. dirs. and costs.

{ Gas Light and }
 { Coke Com. v. Symonds }
 { Symonds v. Gas Light and } exons. & fur. dirs. and costs.
 { Same v. Same }
 { Stillman v. Gas Light and }
 { Coke Com. }

Massey v. Carvick.

Christy v. Courtenay.

Newton v. Askew.

Third day, { Baynton v. Hooper. }
 { Same v. Same. }

Knights v. Stanton, exons.

Wilson v. Eden, fur. dirs. and costs.

{ Benbow v. Davies. }

{ Same v. Evison. }

Bennett v. Cooper, fur. dirs. and costs.

Biggs v. Naylor.

Short { Winnill v. Winmill. } fur. dirs. & costs.
 { Same v. Winmill. }

Gibbins v. North Eastern Metropolitan Railway, fur. dirs. and costs.

{ Fox v. Roberts. }

{ Same v. Same. }

{ Greedy v. Lavender } fur. dirs. and costs.
 { Same v. Owen. }
 { Same v. Parrott }

Robinson v. Robinson, ditto.

{ Carr v. Henderson } ditto and petition.
 { Same v. Thomas }

Oliver v. Dunk.

Page v. Marklaud, re-hearing.

Attorney-Gen. v. Brook, re-hearing.

Lomax v. Lomax, fur. dirs. and costs.

Kirkman v. Booth ditto.

Attorney-General v. Jesus Hospital, Cantefbury fur. dirs. and costs.

NEW CAUSES.

Mainwaring v. Beavor.
 { Hodgson v. Espinasse }
 { Same v. Same }
 Archer v. Hagne.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Baker v. Baker, dem.
 S. O. G., Myers v. Maodonald, 2 causes.
 S. O., Hickson v. Mainwaring, 2 causes.
 To fix { Ladbrooke v. Smith }
 a day. { Browne v. Ditto }
 Attorney-General v. Wilson, pt. hd.
 Stiles v. Guy, exons. and fur. dirs. pt. hd.
 Earl of Balcarras v. Johnson, exons.
 Battershill v. Bishop of Winchester, fur. dirs. and costs
 Jenkins v. Briant, fur. dirs. and petn.
 Adey v. Arnold, fur. dirs. & costs.
 Roberts v. Roberts.
 Green v. Norton, 5 causes, fur. dirs. and costs.
 Rackham v. Siddall.
 { Green v. Bourke. }
 { Bourke v. Green. }
 Cocking v. Briggs.
 Palmer v. White.
 Jones v. Evans.
 Salomons v. Connop.
 { Rainbow v. Lamb fur. dirs. }
 { Ditto v. Moss, cause. }
 Sturges v. Arrowsmith.
 Jones v. Walker.
 Pemberton v. Wilcocks.
 Dobson v. Lyall, fur. dirs. and costs.
 Greenwood v. Groom.
 Westbrook v. Knight.
 Johnson v. Tucker.
 Pocock v. Johnson, fur. dirs. and costs.
 Vulliamy v. Vulliamy.
 Pawsey v. Hale, exons.
 Jowett v. Board, fur. dirs. and 2 petns.
 Skarf v. Soulby.
 Rodney v. Rodney, 3 causes.
 Wood v. Smith, fur. dirs. and petn.
 Askew v. Davidson, fur. dirs. and costs.
 Gray v. Webb.
 Robinson v. Sollory
 Law v. Urlwins, exons.
 { Knight v. Morrall }
 { Harrison v. Ditto }
 { Knight v. Nugent }
 Walker v. Marquis Camden, fur. dirs. and petn.
 Walker v. Stephens, 2 causes.
 Berry v. Attorney-Gen., fur. dirs. and petn.
 Cesarini v. Cesarini.
 Bryan v. Twigg, exons., fur. dirs. and 4 petns.
 Cook v. Fynney, reh.
 Wilkinson v. Hartley.
 Ashburner v. Wilson, fur. dirs. and costs.
 Hill v. Sanders, ditto.
 Fitch v. Friend, fur. dirs. & costs.
 Lawson v. Meek.
 Warden v. Ashburner, fur. dirs. and costs.
 Johnson v. Bates.
 Burton v. Taylor, fur. dirs. and costs.
 Dunholme v. Kent, fur. dirs. and costs.
 Broke v. Warwick, ditto.
 Bruin v. Knott, 3 causes ditto.
 Freeman v. Roberts, 4 causes, fur. dirs.

Claridge v. Pemberton, fur. dirs. and costs.
 Haffenden v. Wood, ditto.
 Sheffield v. Levy, ditto.
 Hitchcock v. Hitchcock, ditto.
 Norcott v. Gordon, ditto.
 Martindale v. Hayton, ditto.
 { Potter v. Waller, exons. }
 { Ditto v. Ditto. ditto. }
 Short, Widnell v. Ridgway.
 Short, White v. Brown, fur. dirs. and costs.
 Cookson v. Lee, 5 causes, ditto.
 Blake v. Phibbs.
 Bell v. Bell.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Hoskins v. Gough, exons. as to pleading.
 Ditto v. Ditto. ditto.
 Forrest v. Whiteway, demr.
 Barton v. Haynes.
 Sowdon v. Marriott, fur. dirs. and costs.
 Coleridge v. Colleton.
 Newton v. Jones.
 Turner v. French.
 Constable v. Threshire, 2 causes.
 Pitt v. Pitt.
 Hassell v. Harley.
 { Thornhill v. Lynne. }
 { Ditto v. Hungerford. }
 Thomas v. Lewis.
 { Payne v. Bainbridge. }
 { Heywood v. Ditto. }
 Parkin v. Rooke.
 Pashley v. Higham.
 Wace v. Bickerton.
 Peyton v. Wood.
 Butler v. Butler, 2 causes.
 Wright v. Suow.
 { Douglas v. Middleton. }
 { Ditto v. Tailby. }
 { Ditto v. Walker. }
 Lewis v. Lewis.
 Clough v. French, exons. and fur. dirs.
 Davys v. Pritchard.
 Mackenzie v. King.
 Spicer v. King.
 Mangles v. Dixon.
 Atterbury v. Smithson.
 Gravenor v. Miles, fur. dirs. and costs.
 Davies v. Evans.
 Baker v. Grosor, fur. dirs. and costs.
 Bailey v. Parry, ditto.

The following Causes to be transferred from the VICE-CHANCELLOR OF ENGLAND'S List of Causes on the 24th of May (by order).

Gee v. Pearse.
 Lenaghan v. Smith.
 Attorney-General v. Inville.
 Langdon v. Box.
 Heseltine v. Edgar.
 Ety v. Dodd.
 Shaw v. Cox.
 Alcock v. Field.
 { Sterry v. Clifton }
 { Clifton v. Sterry }

Vice-Chancellor Sturgeson.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Johnson v. Addams, demr.
 { Clementi v. Fielding. }
 { Ditto. v. Ditto. }
 26th May, Pimm v. Insall, fur. dirs. and costs
 pt. hd.

26th May, *Bursey v. St. Barbe*, fur. dirs. & costs
 26th May, *Squire v. Clunes*.
Sober v. Kemp.
Swann v. Everatt.
Moody, (pauper,) v. Hebbert.
Langdale v. Gill.
Webb v. Salmon.
 { *Ford v. Ford*
 Ditto v. Blackham. } fur. dirs.
Chapman v. Chapman.
Staniland v. Willott.
 29th May, *Squire v. Emblin*, suppl. cause.
Walker v. Eastern Counties Railway.
Monro v. Taylor.
Ellis v. Cowne.
Stephens v. Stephens, fur. dirs. and costs.
 { *Richardson v. Corbett.* } Ditto.
 { *Strangeways v. Ditto.* }
Dowle v. Lucy.
Hewitt v. Hewitt.
Major v. Ward, exons.
 { *Rochfort v. Lambert.* } fur. dirs. &
 { *Ditto v. Shearer.* } costs.
Hudson v. Barry.
Cathrow v. Peard.
Fry v. Fry, fur. dirs. and costs.
Waller v. Uqubart, ditto.
 { *Gowing v. Burge.*
 Ditto v. Sullivan. }
Letts v. London & Blackwall Railway Company,
 etecon. exons.
 The following Causes to be transferred from the VICE-
 CHANCELLOR'S List of Causes on the 24th of May
 (by order).
Cotton v. Cotton.
North v. Morley.
Saunders v. Scott.
 { *Perks v. Painter.*
 Ditto v. Ditto. }
Cole v. Coles.
Ingledeu v. Frenke.
 { *Clarke v. Clarke.*
 Ditto v. Ditto. }
Hughes v. Godfrey.

COMMON LAW SITTINGS.

Queen's Bench.

NOTICE.

The Special Paper will not be taken during Trinity Term, but on the days usually devoted to it, viz, Tuesdays and Fridays; the New Trial Paper will be taken after the Bar has been once gone through for Motions.

The New Trial Paper will be also taken on the usual days, viz., Mondays and Thursdays, and on the first and last four days of Term, in the event of Motions not occupying the Court on the last-mentioned days.

Queen's Bench.

In and after Trinity Term, 1848.

[We gave the substance of these Sitting Papers in the Postscript of last week, and now state them fully as it may be requisite to refer to them.]

MIDDLESEX.

In Term.

1st Sitting, Monday May 29
 And two following days at 11 o'clock.
 2nd Sitting, Thursday June 1
 And subsequent days at Eleven o'clock.

3rd Sitting, Wednesday June 14
 At ¼ past Nine o'clock precisely, for Undefended Causes only.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list, day by day, in their usual order.

Sitting after Term, Saturday June 17
 At half-past 9 o'clock.

LONDON.

In Term.

Sitting at 10 o'clock, Thursday June 15
 For Undefended Causes and such as the Judge considers fit to be taken.

After Term.

Monday June 19
 (To adjourn.)

Common Pleas.

In and after Trinity Term, 1848.

In Term.

MIDDLESEX.

LONDON.

Wednesday . . . May 31 | Friday June 2
 Wednesday . . . June 7 | Friday June 9

After Term.

MIDDLESEX.

LONDON.

Saturday . . . June 17 | Monday June 19

N. B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Monday the 19th June, in London, no causes will be tried, but the court will adjourn to a future day.

Exchequer of Pleas.

In and after Trinity Term, 1848.

In Term.

IN MIDDLESEX.

1st Sitting, Saturday May 27
 2nd Sitting, Saturday June 3
 3rd Sitting, Saturday June 10

IN LONDON.

1st Sitting, Friday June 2
 2nd Sitting, Friday June 9

After Term.

IN MIDDLESEX.

IN LONDON.

Saturday . . . June 17 | Monday June 19
 (To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

COMMON LAW CAUSE LISTS.

IN BANC.

Queen's Bench.

NEW TRIALS.

Remaining undetermined at the end of the Sittings after Easter Term, 1848.

Easter Term, 1846.

York.—Worth & another v. Gresham—Dundas. (Stand over till case in Court of Error is decided.)

Easter Term, 1847.

London.—Newton and another v. Belcher—Crowder.

(Stands over.)

Lincoln.—Huntley v. Russell & another—Whitehurst.

(Part heard.)

Trinity Term, 1847.

Middlesex.—Clayards v. Dethick and another.—Miller.

(Report read—part heard.)

Michaelmas Term, 1847.

Middlesex.—Boosey v. Davidson—Serjeant Shee.

London.—Newton v. Liddiard—Chambers.

Gloucester.—Pike v. Stevens, Esq.—Keating.

Durham.—Humble v. Hunter—W. H. Watson.

(Part heard.)

Liverpool.—Bell, P. O. v. Lord Ingestre—Martin.

(Appointed for 1st Monday in Trinity Term.)

Liverpool.—Norris v. Fresh—Knowles.

(Appointed for 1st Monday in Trinity Term.)

Bristol.—Dyer v. Cowley—Serjeant Kinglake.

Kent.—Wray v. Toke and another—Lush.

Kent.—Giles, sen., and others v. Groves—Chambers.

Flint.—Edwards and Wife v. Williams—Attorney-General.

Flint.—Roberts v. Campbell—Welsby.

Hilary Term, 1848.

Middlesex.—The Queen v. Cutler—Attorney-General.

Middlesex.—George v. Marquis Conyngham—Serjeant Shee.

London.—Watson v. Earl Charlmont and others.—Chambers.

London.—Trimen v. De Burgh—Same.

London.—Wilkins v. Wood—W. H. Watson.

London.—Collard v. Lea—Humfrey.

London.—The Queen v. Charretie and another—Cockburn for defendant Young, Crowder for defendant Charretie.

Tried during Hilary Term, 1848.

Middlesex.—Deacon v. Horden—Defendant in person.

Easter Term, 1848.

Middlesex.—Lock v. Ashdon—Whitehurst.

Middlesex.—Parry v. Berry and others—Crowder.

Middlesex.—Doe d. Campbell and another v. Hamilton—Petersdorff.

London.—Lowe v. Penn—Sir F. Theaiger.

London.—Tucker, Sec., &c. v. Roberts and others—Martin.

London.—Charrington and others v. Crofts—Cockburn.

London.—Alcock v. Royal Exchange Assurance Co.—W. H. Watson.

London.—Bury v. Blogg, admix.—Butt.

London.—Freeman v. Miles—W. H. Watson.

Essex.—Ward v. Keys—Serjeant Shee.

Essex.—Benyon Clk. v. Cresswell—Same.

Kent.—Doe d. Warren v. Brydges (Bridges Tent)—Sir F. Theaiger.

Sussex.—Forth v. Simpson—Serjeant Shee.

Surrey.—The Surrey Iron Company v. Chaplin—Same.

Surrey.—Croft v. Charrington—Same.

Surrey.—Daw v. Scott and another—Lush.

Surrey.—Webb and another, executors v. Spicer—Serjeant Channell.

Surrey.—Same v. Salmon—Serjeant Shee.

Wills.—The Queen v. Inhabitants of Cricklade—Crowder.

Devon.—Steer v. Bowerman,atrix.—Same.

Cornwall.—Doe d. Vingoe and another v. Nicholls—Same.

Cornwall.—Doe d. Thomas and another v. Pascoe—Same.

Somerset.—Aldridge v. Hippisley—Same.

Denbigh.—Doe d. Clay and others v. Jones and others—Townsend.

Northampton.—Doe d. Langley and another v. King—Flood.

Leicester.—Baily and another v. Macaulay—Whitehurst.

Warwick.—Same v. Pearson—Same.

Warwick.—Lord Somerville and others v. Dawson—Same.

Norfolk.—Briggs v. Merchant Traders' Loan Insurance Ship Association—Prendergast.

York.—Shaw v. York and North Midland Railway Company—Knowles.

York.—Dixon v. Burton—Same.

Liverpool.—Marriott v. Cotton—W. H. Watson.

Liverpool.—Bain v. Kirk—Cowling.

Liverpool.—Hassall and another v. Cole—Knowles.

Cardigan.—Jones v. Hall, Esq.—Serjeant H. G. Jones.

Chester.—Vaughan v. Matthews—Chilton.

Tried during Easter Term, 1848.

Middlesex.—Beals v. Cloobury—Chambers.

Middlesex.—Brown v. M'Lean—Serjeant Shee.

SPECIAL CASES AND DENURRERS.

Trinity Term, 1848.

Whitmore and Co.—Morris, Bt., v. Dk. of Beau fort, dem.

(Stand over by consent.)

Gough.—Bowers v. Nixon, dem.

(Stands over.)

Bolton.—Ostler v. Cooke and others, special case
Kinsey.—Doe d. Pennington v. Taniers, award.
Gregory and Co.—Trinity House v. Boodle, special case.

Tilson and Co.—Green and others v. St. Katherine Dock Company, special case.

Newbon and E.—Hoare v. Silverlock, arrest of judgment.

Tippetts and S.—Laurie, Knt., and others, v. Bendall, arrest of judgment.

Temple.—Curlewis v. Laurie and others, dem. to defendant Temple's pleas.

Purrier and W.—Moens and others v. Von Greisham, award.

Madox and W.—Bourne v. Scott, special case.

Bridges and Co.—Russell,atrix., v. Phillips, Bt., special case.

Palmer and Co.—Cousens v. Harris and wife and others, dem.

Westmacott & Co.—Spencer and another *v.* Haggiadur, error.

Freeman and Co.—Bird and another *v.* Smith, sec., &c., dem.

Meggison & Co.—Friar *v.* Grey and others, dem.

Same.—Mason, Clk. *v.* Lambert, Clk., dem.

Fearon and Co.—Burton *v.* White, special case.

Moss.—Kemp *v.* Clark and another, error.

Wiglesworth and Co.—Wharton and another *v.* Naylor and another, dem.

Robson.—Hopkins *v.* Pepper, dem.

Same.—Same *v.* Geary, dem.

White and Co.—Westaway *v.* Frost, arrest of judgment.

Lofty and Co.—The Guardians of the Poor of the Woodbridge Union, in the County of Suffolk, *v.* The Corporation of the Guardians of the Hundreds of Colneis and Carlford, Suffolk, special case.

Parnell and T.—King, Clerk, *v.* Alston, Clk., special case.

Holcombe.—Gregory and another *v.* Chidsey, dem.

Makinson and G.—Palk *v.* Force, sued with Ebbels, dem.

Johnson.—Everest and others *v.* Humphery, dem.

Hall.—Metcalfe, Bt. *v.* Booth, Bt., dem.

Roy.—Harvey, P. O. *v.* Sanderson, dem.

Wrentmore.—Archbutt *v.* Emerson, dem.

Fesenmeyer.—Legge, jun. *v.* Horlock, dem.

Seton and N.—Kempe *v.* Gibbon, dem.

ENLARGED RULES.

For Trinity Term, 1848.

First Day.

Ex parte William Williams, In re Vaughan, to be heard in Bail Court.

In the matter of the East and West India Docks and William Bradshaw.

In the matter of Pauling and another, and the East Lancashire Railway Company.

In the matter of Joshua Lilley and John Harvey, to be heard in Bail Court.

Bradley *v.* Bissington and others, to be heard in Bail Court.

Dawson and others *v.* Hay.

Bowers *v.* Nixon, part heard.

Salter *v.* Winter and another, to be heard in Bail Court.

Webb *v.* Mynn and another, to be heard in Bail Court.

The Queen *v.* The Council of the Borough of Warwick.

Same *v.* The Council of the Borough of Congleton.

Same *v.* Bishop of Rochester and others, to be heard in Bail Court.

Same *v.* Robert Vickery.

Same *v.* Treasurer of the Borough of Oswestry, to be heard in Bail Court.

Same *v.* Ipswich and Bury St. Edmunds Railway Company.

Henry Broom *v.* The Queen.

The Queen *v.* R. T. Tyrwhitt, Esq., magistrate, &c.

Second Day.

Clark *v.* Challis.

Houghton *v.* Hennet, to be heard in Bail Court.

In the matter of E. Foster, jun., and Henry Temple.

Cook *v.* Lynch, to be heard in Bail Court.

Burton and another *v.* Cresswell, Clk., to be heard in Bail Court.

Dawson *v.* Symons, Clk., to be heard in Bail Court.

In the matter of Wood, Gent., one, &c., to be heard in Bail Court.

Ward *v.* King.

The Queen *v.* W. Wilkinson and another, justices.

Same *v.* Trustees of the Rochdale and Halifax Turnpike Road.

Same *v.* C. W. Johnson, Auditor of Delverton Union.

Third Day.

Hudson *v.* Wing, to be heard in Bail Court.

The Queen *v.* Inhabitants of Fivehead, to be heard in Bail Court.

Same *v.* Coroner of the City of Kent, to be heard in Bail Court.

Same *v.* Justices of Lancashire, to be heard in Bail Court.

Friday, 2nd June.

In the matter of Wawn, Gent., one, &c. ex parte John Rolling, to be heard in Bail Court.

Common Pleas.

DEMURRERS PAPER.

| | |
|---------------------|----------------------------------|
| Friday . . . May 26 | } Motions in Arrest of Judgment. |
| Saturday . . . 27 | |
| Monday . . . 29 | |
| Tuesday . . . 30 | |
| Wednesday . . . 31 | Special Arguments. |

Engstrom and others *v.* Brightman and others.

Penrice *v.* Penrice.

Same *v.* Same

Lord Newborough and others *v.* Schroder.

Hoppe *v.* Gordon.

Humfrey, a lunatic, *v.* Gery.

Kepp and another *v.* Wiggett and others.

Morrison *v.* Chadwick.

Frazer *v.* Hemsworth.

Sanderson *v.* Dobson.

Astley *v.* Fisher.

Reynolds *v.* Read.

Holland, W. *v.* King and another.

Lomax *v.* Landells.

Dean and Chapter of Ely *v.* Cash.

Nash *v.* Brown.

Keams *v.* Durell.

Boden *v.* Smith and others.

Woolf *v.* City Steam Boat Company.

Monypenny *v.* Derang.

Vincent *v.* Bishop of Sodor and Man and others.

Pilgrim *v.* Southampton and Dorchester Railway.

Reed *v.* Shrubsole.

Jones *v.* Ashpitol

Ward and others *v.* Dalton.

Munroe and others *v.* Bordier and others.

Gooch *v.* Shordiche.

Batty *v.* St. Aubyn, Clk.

Besset *v.* De Witte.

Graham and others, assignees, &c. *v.* Cox and another.

Wetherell *v.* Julius and another.

Field *v.* Walker.

Empson and another *v.* Knowles.

Sands and others *v.* Clarke.

Wilson and others *v.* Bevan.

Birch *v.* Rees.

Smaner, admix. *v.* Great Western Railway Co., loss of life.

Same *v.* Same, loss of goods.

Friday . . . June 2

Wednesday . . . 7

Friday . . . 9

} Special arguments.

Remanet Paper of Trinity Term, 1846.

ENLARGED RULES.

To 1st day.—Buck and ors., assees, v. Peasgood
 Walkinshaw v. Freebody and anor.
 Gibbs and another v. Flight & anr.
 Phillips v. Lewis.
 Wadsworth v. Barrett.
 Darrington v. Prige.
 Doe Leleup & anr. v. Tinling & ors.
 M'Gregor v. Barrett.

To 2nd day.—Coles v. Bullman.
 Phillips v. Merchant Traders Ship,
 &c., Insurance Company.
 Corden v. Universal Gas Light Co.
 In the matter of Alexander War-
 rand, Gent.

New Trials of Easter Term, 1847.

London.—Nickels v. Ross, jun. } appointed for
 London.—Same v. Same. } Thursday Ju. 1
 London.—Hopwood v. Thorn.
 (Partly heard 10th May.)

London.—Barker v. Griffiths.
 London.—Perry v. Parr.
 London.—Blackie v. Pidding.
 Norfolk.—Gurrard v. Tuck (in dower.)
 Suffolk.—Vipan v. Gay and others, (to stand
 over indefinitely by consent per cur. 11 Jan. 1848.)
 Suffolk.—Same v. Same.

New Trials of Trinity Term last.

Middlesex.—Barnes, administrator, v. Ward.
 Middlesex.—Young v. Geiger.
 Middlesex.—Same v. Same.
 London.—Alexander v. Mackenzie, pub. offi.
 London.—Belcher & others, assignees, v. Patten.

New Trials of Michaelmas Term last.

Middlesex.—Hopwood v. Whaley.
 Middlesex.—Cotins v. Bennett and others, exors.
 Middlesex.—Jenkinson and another v. Raphael.
 Middlesex.—Doe Cotesworth and others v.
 Skinner.

Middlesex.—Edmonds and others v. Challis and
 another.

Middlesex.—King v. Jones, (Sergent v. Gammon,
 moved in Easter Term, 1848, to be argued with
 this rule.)

Middlesex.—Nind v. Arthur.
 London.—Blandy v. De Burgh.
 London.—Powell v. Bradbury and another.
 London.—Beard v. Egerton and others.
 London.—Croll v. Edge.
 London.—Smith v. Roberts and others.
 London.—Daw, jun. v. Butler and another.
 London.—Lender and another v. Purday.
 Hunts.—Harvey v. Johnston.
 Surrey.—Fitzgerald v. Fitzgerald.
 Kent.—Lawes and another v. Brown and another.
 Warwick.—Tarleton v. King.
 Leicester.—Edwards v. Lawless.
 Norfolk.—Huggins, jun. v. Bailey.
 Suffolk.—Young v. Raincock.
 Worcester.—Boraston v. Frances.
 Stafford.—Humphries v. Longmore and another.
 Monmouth.—Crosfield v. Morrison.

New Trials of Hilary Term last.

Middlesex.—Caunt v. Thompson.
 Middlesex.—Same v. Same.
 Middlesex.—Tappenden, a pauper, v. Ball.
 London.—Schwartz v. Sharp and another.

London.—Benett v. The Peninsular and Oriental
 Steam Navigation Company.

London.—Crowther v. Solomons.

London.—Russell v. Briant.

London.—Tappin v. City Steam Boat Company.

London.—Cockburn v. Alexander.

New Trials of Easter Term last.

Middlesex, Kinning v. Buchanan, Gent.

Middlesex, Duke of Brunswick v. Slowman and
 others.

Middlesex, Same v. Same.

Middlesex, Same v. Same.

Middlesex, Sargent v. Gammon. Pur. Cur., to
 be argued with King v. Jones, moved in Michael-
 mas Term.

Middlesex, Bowyer, assignee, v. Long.

Middlesex, Thompson v. The Wesleyan News-
 paper Association, (unless special case be con-
 sented to.)

Middlesex, Same v. Same.

Middlesex, Summers v. Davis, sued, &c.

Middlesex, Franklin v. M'Leod.

London, Richards v. London, Brighton, and South
 Coast Railway Company.

London, Lewis v. Campbell.

London, Walker v. Giles and another.

London, Bayley v. Wilkins.

London, Somerville v. Hawkins.

London, Jones and another v. Broadhurst.

Norfolk, Heyhoe v. Burge.

Herts, doe (Gutteridge) v. Sowerby.

Herts, Haukin, executor, &c., v. Smith, heir, &c.,
 and others.

Kent, Lisco v. Curling and another.

Kent, White and others v. South Eastern Rail-
 way Company.

Surrey, Pennell and others, assignees, &c. v.
 Stephens.

Surrey, Mayhew and another, assignees, v. Her-
 rich.

Surrey, Same v. Same.

Surrey, Turner v. Meryweather.

Essex, Wright v. Coles.

Somerset, Doe (Kinglelake) v. Beviss.

Somerset, Lee v. Lester.

Cornwall, Peter v. Daniel.

CUR. AD. VULT.

Patteson v. Holland and others, to stand over
 till the sci. fa. in Q. B. is disposed of.

Couling v. Coxe.

Brown v. De Winton.

Gay and another v. Lauder.

Doe Miller and others v. Claridge.

Smith v. Mursack.

Howden v. Standish, Esq.

Morgan and another, executors, v. Earl Aber-
 gavenny.

Brown v. Chapman.

Smith v. Kenrick.

Field v. Mackenzie.

Murray and others v. Hall.

Applications for New Trials suspended.

Middlesex, Jarrett v. Kennedy.

Middlesex, Anty v. Hutchinson.

Exchequer of Pleas.

PEREMPTORY PAPER.

Trinity Term, 1846.

To be called on the first day of the Term, after the
 motions, and to be proceeded with the next day, if
 necessary, before the motions.

Rule Nisi.

18th Jan. 1848.—Norton *v.* Robinson and another—Mr. Cowling and Mr. Martin.

2nd May, 1848.—Faviell, jun., *v.* The Eastern Counties Railway Company—Mr. Willes and Mr. Knowles.

2nd May, 1848.—Same *v.* Same—Mr. Hoggins and Mr. Martin.

29th April, 1848.—Powell *v.* Williams—Mr. Lush and Mr. Hindmarch.

18th April, 1848.—Hallett *v.* Chamberlayne—Mr. Prentice and Mr. Thomas.

29th April, 1848.—Salter *v.* Fulford—Mr. Whitehurst and Mr. Humfrey.

14th Jan. 1848.—Bourne *v.* Broad—Mr. E. James and Mr. Martin.

28th April, 1848.—Bache *v.* Etheredge and another—Mr. Chambers and Mr. Crowder.

DEMURRERS.

For Judgment.

Coupland *v.* Challis.
(Heard 7th Dec. 1847.)

Venables, clk., *v.* East India Company.
(Heard 19th Jan. 1848.)

Richards *v.* Lord Suffield.
(Heard 1st May, 1848.)

For Argument.

Varley and others *v.* Leigh.

Platel *v.* Bevill.
(Part heard 5th May, 1848.)

Pratt *v.* Pratt and others.

Scarbrooke and others *v.* Kennard and another.

Graham and another *v.* Ingleby and another.

Jones *v.* Morris and another, (Replevin 1st action.)

Cann *v.* Hughes.

Serrell *v.* Allen, sued, &c.

Williams *v.* Lord de Lisle and Dudley.

Mounsey and another *v.* Perrott, jun.

Brown and wife *v.* Hartbill.

Edmonds, P. O. &c. *v.* Bland.

Richards *v.* James.

Loveroni *v.* Corrito.

Graham *v.* Fitzgerald.

Brettell and others *v.* Williams and others.

Washbourn *v.* Foley.

North British Insurance Company *v.* Riky.

Hugh and others *v.* Juggar and another.

Webster *v.* Crouch and another.

Cherry *v.* Heming, (sued with Needham).

Brymer *v.* The Thames Haven Dock and Railway Company.

Turnbull *v.* Pell, jun.

Stevens *v.* Jervis.

May *v.* Seyler.

D'Arcy *v.* Lambert.

Potter *v.* Elcock.

Wigham and another *v.* Beaumont.

Graham and others, assignees, &c. *v.* Dearie.

Faulkner *v.* Lowe.

Wambersie and another *v.* Phillips and another.

Giles *v.* Hutt and others.

Dawson and another *v.* Dawson.

Lawford and another *v.* Blurton.

Same *v.* Gadesden.

Ames *v.* Lloyd.

Adams *v.* Phillips and another.

Day *v.* Ross.

Day *v.* Croskey.

Norton *v.* Walker.

Ness *v.* Fenwick.

Wayman *v.* Carman.

Fielding *v.* Brooke.

Howard and another, exors., &c., *v.* Vakes.

Shepherd and others *v.* Little and others.

Garner *v.* Humfrey and another.

Ewen, jun., *v.* Smith.

Faulkner *v.* Lowe.

Hastings and others, exors. and extrixes. *v.* Whitley.

Cunliffe *v.* Lamont.

Chilton and others, assignees, &c., *v.* Luke.

Green *v.* London and North-Western Rail. Com-

pany.

Holt and another *v.* Gibson and others.

Chaffers *v.* Coghlan, Clk.

Holland *v.* Nelson.

Studd *v.* Hammann.

Wilkes *v.* Cutler and others.

Tribbeck *v.* Self.

Miller and another *v.* Hay.

SPECIAL CASES.

For Judgment.

Doe d. Knight *v.* Spencer.

(Heard 15th Nov. 1847.)

Doe dem. Knight *v.* Samson and others.

(Heard 8th May, 1848.)

Molton and wife, admix., &c., *v.* Camroux, sec., &c.

(Heard 17th and 21st Jan. 1848.)

Graham and others, assignees, &c., *v.* Allsopp.

(Heard 8th May, 1848.)

Toynbee *v.* Brown, clk.

(Heard 13th May, 1848.)

Watson and another *v.* Pearson.

(Heard 16th May, 1848.)

Bielby *v.* Shepherd.

(Heard 16th May, 1848.)

For Argument.

Royal Mail Steam Packet Company *v.* Acraman by order of *Nisi Prius*.

Lamprell *v.* The Guardians of the Billerica Union, special case on award.

Nicholson *v.* Rayne, by order of Baron Platt.

Griffith *v.* Pike, by order of Baron Parke.

Walker and others *v.* Macdonald, by order of *Nisi Prius*.

Bromilow and another *v.* Sane and others, by rule of court.

Owen *v.* De Beauvoir, special verdict.

Addenbrooke and others *v.* Botfield, by rule of court.

Frith and others *v.* Cazenove and another, by order of *Nisi Prius*.

Wedgwood v. Adams and another, by order of *Nisi Prius*.

Hopkinson, Treasurer, v. Puncker and another, by order of Baron Alderson.

Wood and others v. Wand and others, by order of *Nisi Prius*.

Cooper v. Norfolk Railway Company, by order of Baron Alderson.

Williams, exor., &c., v. Griffith, by order of *Nisi Prius*.

NEW TRIAL PAPER.

For Trinity Term, 1848.

FOR JUDGMENT.

Moved Easter Term, 1847.

Kingston, Lord Denman.—Boileau v. Rudlin—Mr. Sergeant Shee.

(Heard 22nd and 29th Jan. and 5th Feb. 1848.)

Moved Trinity Term, 1847.

Middlesex, Lord Chief Baron.—Jacobs v. Hyde—Mr. Hake.

(Heard 2nd May, 1848.)

Moved Michaelmas Term, 1847.

Middlesex, Mr. Baron Platt.—Morley v. Attborough—Mr. Martin.

(Heard 11th May, 1848.)

FOR ARGUMENT.

Moved Easter Term, 1847.

Gloucester, Mr. Justice Maule.—Christy and others (on affidavits) v. Powell and others—Mr. Whatelcy for defendant Pidgeon.

Moved Michaelmas Term, 1847.

London, Lord Chief Baron.—Burnside v. Dayrell—Mr. Crowder.

London, Lord Chief Baron.—Same v. Same—Mr. Martin.

London, Lord Chief Baron.—Waller v. Bishop—Mr. Crowder.

London, Lord Chief Baron.—Fraser v. Lochner—Mr. Martin.

London, Lord Chief Baron.—Hennah v. Clark—Mr. Humfrey.

London, Lord Chief Baron.—Percy v. Hopkins—Mr. Bramwell.

Yorkshire, Lord Chief Baron.—Graburn v. Horberry—Mr. Baines.

Moved after the 4th day of Michaelmas Term, 1847.

Middlesex, Mr. Baron Platt.—Ballinger v. Shepard—Mr. Petersdorff.

Middlesex, Mr. Baron Platt.—Maile v. Mann—Mr. O'Malley.

Middlesex, Mr. Baron Platt.—Middleditch v. Ellis—Mr. Pashley.

Moved Hilary Term, 1848.

Middlesex, Lord Chief Baron.—Stevens v. Keating—Attorney-Gen.

Middlesex, Lord Chief Baron.—Same v. Same—Sir F. Thesiger.

Middlesex, Lord Chief Baron.—Lewis v. Simpson—Mr. Chambers.

London, Lord Chief Baron.—Fox and others v. Rigby and another—Mr. Attorney-General.

London, Lord Chief Baron.—Willey v. Parratt and others—Sir F. Thesiger.

London, Lord Chief Baron.—Clarke v. Woods and others—Mr. Crowder, for defendants Woods and Smith.

London, Lord Chief Baron.—Clarke v. Woods and others—Mr. Bramwell, for defendant Cooper.

London, Lord Chief Baron.—Machu v. London and South-western Railway Company—Mr. Martin.

London, Lord Chief Baron.—Conuop v. Challis and another—Mr. Martin.

London, Lord Chief Baron.—Herring v. Hudson and others—Mr. Watson.

London, Lord Chief Baron.—Atkinson v. Focock—Mr. Humfrey.

London, Lord Chief Baron.—Chew v. Jones—Mr. Humfrey.

London, Lord Chief Baron.—Daines v. Hartley and another—Mr. Chambers.

Moved after the 4th day of Hilary Term, 1848.

Middlesex, Mr. Baron Rolfe.—Gawler v. Chaplin and others—Mr. Humfrey.

London, Mr. Baron Rolfe.—Kitchingman v. Skeel and another, exors., &c.—Mr. Lush.

Moved Easter Term, 1848.

Middlesex, Lord Chief Baron.—Long v. Rennie and another—Mr. Hill.

Middlesex, Lord Chief Baron.—Morley and others, on affidavit, v. Weston—Mr. Hayes.

London, Lord Chief Baron.—Landon v. Beioley—Mr. Crowder.

London, Lord Chief Baron.—Mowatt v. Thompson—Mr. Martin.

London, Lord Chief Baron.—Borrett and another v. Johnson—Mr. Martin.

London, Lord Chief Baron.—Bartlett v. Gee and others—Mr. Martin.

London, Lord Chief Baron.—Sage v. Robinson—Mr. Humfrey.

COMMON PLEAS.

Durham, Mr. Baron Rolfe.—Bolckow v. Jackson—Mr. Granger.

York, Mr. Baron Alderson.—Freeman and another v. Edwards and others—Mr. Knowles.

York, Mr. Baron Alderson.—Hayne v. Dandison—Mr. Baines.

York, Mr. Baron Alderson.—Horsfall v. Key and others—Mr. Martin.

Liverpool, Mr. Baron Alderson.—Freeman and others v. Cooke, Bt., and another—Mr. Knowles.

Liverpool, Mr. Baron Alderson.—Same v. Same—Mr. Watson.

Liverpool, Mr. Baron Rolfe.—Van Casteel and another v. Brooker and others—Mr. Attorney-General.

Liverpool, Mr. Baron Rolfe.—King v. Cole—Mr. Knowles.

Liverpool, Mr. Baron Rolfe.—Blackburn v. Smith—Mr. Baines.

Liverpool, Mr. Baron Rolfe.—Clarke v. Holford—Mr. Crompton.

Liverpool, Mr. Baron Rolfe.—Same v. Same—Mr. Baines.

Liverpool, Mr. Baron Rolfe.—Allen v. Edmundson—Mr. Martin.

Liverpool, Mr. Baron Rolfe.—Standish v. Ross, jun.—Mr. Martin.

Winchester, Mr. Justice Wightman.—Marting v. Wright and another—Mr. Cockburn.

Dorchester, Mr. Justice Wightman.—Slade and another v. Barnes—Mr. Crowder.

Exeter, Mr. Justice Wightman.—Acland, Bt. v. Buller and another—Mr. Crowder.

Exeter, Mr. Justice Wightman.—Elliot v. South Devon Railway Company—Mr. Serj. Kinglake.

Exeter, Mr. Justice Wightman.—Ridley v. The Plymouth, Stonehouse and Devonport Grinding and Baking Company—Mr. Collyer.

Exeter, Mr. Justice Wightman.—Kingsbridge v. Flour Mill Company v. Same—Mr. Collyer.

Taunton, Mr. Baron Platt.—Cooke and another v. Sealy and another—Mr. Crowder.

Taunton, Mr. Baron Platt.—Brown v. Notley—Mr. Serj. Kinglake.

Hertford, Lord Denman.—Elvensperger v. Anderson—Mr. Serj. Channell.

Survey, Lord Denman.—Hosking v. Phillips—Mr. Serj. Channell.

Lincoln, Lord Chief Justice Wilde.—Codd v. Casey—Mr. Humfrey.

Derby, Lord Chief Justice Wilde.—West v. Fritchbe—Mr. Macaulay.

Warwick, Lord Chief Justice Wilde.—Smith v. Davenport—Mr. Whitelurst.

Warwick, Lord Chief Justice Wilde.—Barrett and another v. Jermy and others—Mr. Humfrey.

Warwick, Lord Chief Justice Wilde.—Higgins v. Hopkins—Same.

Warwick, Lord Chief Justice Wilde.—Forrester v. Smith—Same.

Warwick, Mr. Justice Maule.—Stanton, on affid. v. Knight—Mr. Whitehurst.

Warwick, Mr. Justice Maule.—Cox v. The Midland Railway Company—Mr. Humfrey.

Warwick, Mr. Justice Maule.—Davies and another v. The Midland Railway Company—Same.

Warwick, Mr. Justice Maule.—Silk v. Same—Same.

Stafford, Mr. Justice Patteson.—Dobbs v. Penn—Mr. Serj. Talfourd.

Stafford, Mr. Justice Patteson.—Stevenson v. Buckton—Same.

Hereford, Mr. Justice Patteson.—Price and another assignees, &c. v. Woodhouse and another—Mr. Godson.

Gloucester, Mr. Justice Patteson.—Cannock v. Jones—Mr. Godson.

Swansea, Mr. Justice Williams.—The Duke of Beaufort v. The Mayor, Aldermen, and Burgesses of Swansea—Attorney General.

Moved after the 4th day of Easter Term, 1848.

Middlesex, Mr. Baron Alderson.—Arnold v. Ryan—Mr. Serj. Wilkins.

Middlesex, Mr. Baron Alderson.—Glen v. Dungey and another—Mr. Pearson.

PROGRESS OF LAW BILLS IN PARLIAMENT.

House of Lords.

NEW BILLS IN PROGRESS.

Incumbered Estates Ireland. Re-committed. Clergy Offences. For 2nd reading.—Bishop of London.

Amendment of Criminal Law. In Select Committee.—Lord Campbell.

Unnecessary Actions Prevention. In Committee.—Lord Campbell.

Bail by Coroners for Manslaughter. In Committee.—Lord Campbell.

Bankruptcy Law Amendment. For 2nd reading.—Lord Brougham.

Parliamentary Proceedings Adjournment. In Committee

Removal of Poor. In Committee.

Relief of Jews. Negatived by a majority of 35.

House of Commons.

NEW BILLS IN PROGRESS.

Winding-up Joint-Stock Companies. Passed.—Mr. Milner Gibson.

Administration of Justice out of Sessions. (No. 1). In Select Committee.—Attorney-Gen.

Special and Petty Sessions. In Select Committee.—Attorney-General.

Protection of Justices. In Select Committee.—Attorney-General.

Administration of Justice on Summary Convictions. (No. 2). In Select Committee.—Attorney-General.

Agricultural Tenant-right. For 2nd reading.—Mr. Pusey.

Roman Catholic Relief. In Committee.—Mr. Anstey.

Public Health. Consideration of Report.—Lord Morpeth.

Game Certificates. In Committee.—Mr. Colville.

To Establish an Appeal in Criminal Cases. For 2nd reading.—Mr. Ewart.

Exempting Small Tenements from Rates.—Mr. P. Scrope. For 2nd reading.

Parliamentary Electors Rates.—Sir De Lacy Evans. In Committee.

Remedies against the Hundred. Sir W. Clay.—For 2nd reading.

Vacating Seats of Insolvent Members.—For 2nd reading.—Mr. Moffatt.

NOTICES OF NEW BILLS.

Imprisonment before Trial.—Lord Nugent. To Prevent Bribery at Elections.—Sir J. Pakington.

Game Laws.—Mr. Bright.

Ecclesiastical Courts.—Mr. Bouverie.

Rights of Outgoing Tenants.—Mr. S. Crawford.

Friendly Societies.—Mr. F. O'Connor.

Extending Election Franchise.—Mr. Wyld.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JUNE 3, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

НОКАТ.

TRIAL BY JURY.—MR. MITCHELL'S CASE.

MR. MITCHELL'S trial and conviction in Ireland, under the Crown and Government Security Act, (11 Vict. c. 12,) apart from its local and political bearing and consequences, affords matter for grateful reflection to those who concur with us in believing that the established institutions of the kingdom, and the framework of the laws, have sufficient strength and elasticity, not only to adapt themselves to the ordinary exigencies of society, but successfully to repel the rudest political shocks. The history of the statute in question, and its speedy operation in Mr. Mitchell's case, fortify the confidence of those who assert, that the laws are never inefficient but when there is a lack of decision and energy on the part of the executive government. The latitude allowed in political discussion, and the acknowledged indisposition to engage in political prosecutions, had given birth to a new species of danger, which the existing law did not adequately meet, and which became so imminent as to endanger the peace of society. The Act “for the better Security of the Crown and Government of the United Kingdom,”^a was framed to meet this emergency. It received the Royal Assent so recently as on the 22nd April last. It is in no respect an *ex post facto* law. Yet an offence was committed within its provisions, and the offender had been tried, found guilty, and his sentence

was in progress of execution, in little more than a month after the act in question became the law of the land. There was no proceeding precipitated, no legal form omitted, no constitutional rule violated, and still the law performed its functions with a rapidity not often exceeded in countries where the will of the monarch stands in the place of law.

The sole ground upon which the verdict in Mr. Mitchell's case is questioned, or sought to be impugned, is the composition of the jury by which he was convicted. It is said that, although the accused had ample time for preparation, and his counsel unlimited license of speech and a patient hearing, the jury was unfairly selected. This is an imputation easily, and not very unfrequently, made in reference to trials for political offences. We should grieve to find the charge could be substantiated, for it is impossible not to perceive, in professional circles as well as in general society, a tendency to regard the trial by jury with diminished admiration and respect. The supporters of the institution demand, and perhaps with unanswerable cogency, whether in questions between the Crown and the subject, any other tribunal could be constituted with an equal assurance of independence and impartiality? But in such cases, if the jury were to be composed of men having the same political predilections as the accused party, the trial by jury would be a mockery. It is contended, however, that if men with congenial sentiments to Mr. Mitchell have been excluded from this jury, the jury was necessarily composed of men of adverse sentiments. A person charged

^a This act is printed in *extenso*, Leg. Obs. vol. 35, p. 600.

with larceny might as well complain that his jury consists of honest men who respect the laws of property. Defiance of the law, and armed resistance to the execution of its decrees, were the principles advisedly counselled by Mr. Mitchell. The authorities charged with the execution of the law did not deem it consistent with their sense of duty to entrust its administration to jurors whom they believed capable of acting under the influence of such principles. This seems to have been the head and front of their offending.

We shall only add, that the Irish jury law is essentially similar to that which has prevailed in England since the passing of the 6 Geo. 4, c. 50. In this country, as in Ireland, the sheriff is not bound to take indiscriminately, or as they occur in the jurors' book, the complement of men required to be inserted in the panel returned by him. This was clearly recognised in the case of *The King v. Wooler*, 1 B. & Ald. 193, where it is laid down that the officer may select, and if he selects impartially, the Court cannot interfere. Here also, as in Ireland, those who represent the Crown in criminal trials have the right to direct objectionable persons returned on the jury panel to "stand by," until it is ascertained whether the sheriff has returned the names of twelve persons who are unobjectionable as well to those who represent the Crown as to the party prosecuted. Unless the law officers of the Crown were invested with some authority of this nature, the right of the accused, in cases of felony, to challenge twenty peremptorily, and as many more as he can show reasonable cause for, may be attended with consequences inconvenient and even fatal to the administration of justice. The Crown has no right of peremptory challenge (6 Geo. 4, c. 50, s. 29,) but the power of the Crown to challenge without showing cause of challenge till the whole panel be gone through, has been constantly resorted to in all cases where there is any ground to suppose any of the jurors, in the language of the statute, "be not indifferent for the King." The boasted prevalence of Mr. Mitchell's principles in Ireland furnishes an abundant justification to those who acted, as it seems to us on this occasion, in the spirit of the law, and according to established usage.

For Mr. Mitchell himself, we can only regret that a man of education, with a certain firmness of character which might have been estimable in other circumstances, should have placed himself, by the indulgence of a reckless infatuation, in a position so humiliating and painful.

LAW OF ATTORNEYS.

DELIVERY OF BILL, WHEN SUFFICIENT.

THE ordinary difficulties encountered by professional men in enforcing the payment of their just charges are considerably increased when the services are performed on behalf of companies. Various instances have arisen, in respect of companies, where doubts have presented themselves as to the necessity of a strict compliance with the terms of the 37th section of the 6 & 7 Vict. c. 73. That section, it will be remembered, enacts, that no attorney or solicitor shall maintain any action for the recovery of his fees, &c., until the expiration of one month after such attorney or solicitor "shall have delivered unto the party to be charged therewith, or sent by post to, or left for him, &c., a bill of such fees," &c.; and the question has often arisen, what is a sufficient delivery of the bill to satisfy the requisites of the statute? The point was brought under the consideration of the Court of Exchequer, in a case of *Eggington v. Cumberledge*, very recently reported.^b

In that case the action was brought by an attorney, who had been employed as local agent by the Provisional Committee of "The Birmingham and Manchester Direct Railway Company," against one of the committee who had taken an active share in the advancement of the scheme. The defendant pleaded, that no signed bill was delivered, as required by the statute, and the question for the Court was, whether the plaintiff adduced sufficient evidence to establish the issue raised upon that plea? It appeared that at a meeting of the provisional committee, in January, 1846, at which the defendant was not present, the general solicitor of the company was directed to write to the plaintiff to send in his bill, which was accordingly done, the bill being received by the general solicitor at his own residence. The bill so received was laid before the committee on the 13th January, when the defendant was present, and the action was commenced in the month of June following. It was contended on behalf of the defendant, that there was only a constructive delivery of the bill to the defendant, which was insufficient, and *Eicke v. Nokes*^c was cited, where it appeared that the bill had been delivered at a place which was not proved to be the defendant's residence, but the copy so delivered was afterwards found in

^b 1 Exchequer Reports, p. 271.
^c 1 Mood. & Mal. 303.

the possession of the clerk of the defendant's attorney, who attended the taxation of costs. In that case Lord Tenterden said, "When an act of parliament requires a particular thing, I must see that it is proved," and he nonsuited the plaintiff.

The Court distinguished the case of *Eggington v. Cumberledge* from that cited, because there it did not appear that the bill came into the defendant's possession a month before the action was commenced. Here the bill came into the possession of parties who might have been sued jointly with the defendant, and the bill was laid before the committee, on one occasion, when the defendant was actually present, which was good evidence of a delivery of the bill to him. Upon these grounds, the Court determined that the plaintiff was entitled to the verdict. The just and liberal view of the provision of the statute taken in this case renders it an authority not unworthy of being noticed.^d

BUSINESS OF THE COURT OF EXCHEQUER.

THE Court of Exchequer, with the laudable design of diminishing the number of cases in the demurrer and new-trial papers, of which we furnished our readers with complete lists, (*ante*, pp. 86, 7, & 8,) proposed to hold separate sittings in Banco during the present Term, and it was intended that Barons Parke and Platt should sit in one Court to dispose of cases selected from the demurrer paper, whilst the Chief Baron and Barons Alderson and Rolfe should sit in the adjoining Court and proceed with the new trial paper and the ordinary business of the Court. This intention having been publicly announced, some doubt was intimated, whether the Court was authorised to multiply its sittings in the manner contemplated. The statute under which the judges of the courts of law sit apart during the Term is, the Act for the better Administration of Justice, 1 Will. 4, c. 70, which enacts by section 1, that,—

"Whenever her Majesty shall be pleased to appoint an additional puisne judge to either of the Courts of Queen's Bench, Common Pleas, and Exchequer, the puisne judges of such Court shall sit by rotation in each term, or otherwise as they may agree among themselves, so that no greater number than three shall sit at the same time in Banc for the transaction of business in term, unless in the absence of the Chief Justice, or Chief Baron, and it shall be lawful for any of the judges of

either of the said Courts, when occasion shall so require, while the other judges of the same Court are sitting in Banc, to sit apart from them for the purpose of adding and justifying special bail, discharging insolvent debtors, administering oaths, receiving declarations required by statute, hearing and deciding upon matters on motion, and making rules and orders in causes and business depending in the Court to which such judge shall belong, in the same manner and with the same force as may be done by the Court sitting in Banc."

Upon a careful consideration of this provision of the statute, the Lord Chief Baron stated, on Monday last, that the Court had come to the conclusion that it was not expedient to hold separate Courts, as at first contemplated. By the terms of the act they would perhaps be justified in holding distinct Courts, because the section in question provided, that whilst some of the judges were sitting in *banc*, any of the judges might set apart from them, for the purpose, amongst other things, of "hearing and deciding upon matters on motion, and making rules and orders." Disposing of rules entered in the new trial paper would, perhaps, be within the letter of this section, but the judges could not say such a construction was within the spirit of the enactment referred to, and it had therefore been determined to abandon the arrangement of holding distinct Courts during Term, and proceeding contemporaneously with causes entered in the demurrer and new trial papers. The Court, however, hoped to be able shortly to fix upon some other plan, less objectionable, for facilitating the dispatch of business.

Our readers will probably agree with us, that it never could have been intended by those who framed the Act for "the better Administration of Justice" that there should have been two branches of the same Court sitting in Banc at the same time, and we cannot help thinking that if, the experiment had been tried, it would have produced a degree of inconvenience and annoyance to the suitors and the profession which could not have failed to produce great dissatisfaction. The non-attendance of counsel when the causes in which they are engaged happen to be called on, is often and justly complained of, but if the same Court is proceeding with its ordinary business in distinct places at the same hour, no arrangements on the part of counsel can insure punctuality, and the interests of the clients must inevitably be sacrificed. We rejoice, therefore, that the scheme of holding separate sittings in Term has been relinquished.

LECTURES AT THE INCORPORATED LAW SOCIETY.

MR. WARREN commenced his Lectures on the Moral, Social and Professional Duties of Attorneys and Solicitors, on Monday last, the 29th May, at the Hall of the Society, before a very crowded audience, amongst whom we noticed many barristers, Mr. Sergeant Talfourd, Mr. Watson, Q. C., Messrs. Merewether, Ball, Bovill, Hugh Hill, Willes, Atherton, Miller, Maynard, the Hon. G. Denman, &c. &c. &c. We also observed many lay gentlemen and several of the clergy. There was a very numerous attendance of the members of the society, and nearly all the subscribers to the Equity, Conveyancing and Common Law Lectures, were present. Mr. Warren was accompanied into the Hall by Mr. Austen, the Vice-president, and by Mr. Holme, Mr. Tooke, and other members of the council, and commencing at 8 precisely, did not conclude till half-past 9 o'clock.

As the Lectures are to be forthwith printed, we shall content ourselves with an outline only of that which was delivered on Monday.

The learned gentleman commenced by declaring, that his appearing before the society on that occasion, was an attempt to discharge some portion of that debt which Lord Bacon said, that every man owed to his profession; to endeavour, however feebly, to contribute to the advancement of its real interests, which were identical with those of the public. He then proceeded in a very eloquent and masterly manner to illustrate the actual operation of law, through the instrumentality of lawyers—by whom that law was realized, its existence and action seen and felt by all classes of the community. The employment of attorneys and solicitors was not a matter of choice but necessity. "Speaking as one of the public," said Mr. Warren, "we cannot, gentlemen, even if we wished it, do without you"—for no amount of circumspection, virtue, or talent—no degree of amiability of character can prevent its possessor from being at some time or another involved in unexpected litigation; while our own most private affairs, the moment they become of greater delicacy and difficulty than usual, are at once confided to professional hands. "We die, gentlemen," said Mr. Warren, "in confident reliance on the integrity and skill with which you have undertaken to carry our last wishes into effect after our departure," and the learned lecturer proceeded to

paint a very glowing and vivid picture of some of the innumerable emergencies in which recourse must be had to professional assistance, and in which life itself, character, liberty, and property may be sacrificed through professional incompetence or misconduct.

Mr. Warren then proceeded to give an exposition of Law as being the power by which society was formed and sustained, in being the "glorious product"—being *civil liberty*—which he defined as the result of a perpetual contest between national liberty and authority: two powers ever sternly confronting each other in all forms of government conceivable. Law was, in short, a process by which cases, as they arose, affecting the interests of individuals or whole classes, were incessantly withdrawn from "the dangerous powers of discretion," and subjected to inflexible rules, continually extending the dominion of truth and justice, and restricting within narrow and still narrower limits the domain of brutal force and arbitrary will." Mr. Warren here read an admirable and most appropriate passage from one of the sermons of "that profound thinker," Bishop Butler, and proceeded to speak of the sense of security which we enjoyed under our institutions, as contrasted with "our continental brethren," whom he describes as "surrounded with a bloody haze, in which they might be seen suffering the dreadful spasms of revolution, and in which true liberty was being stifled;" and, in allusion to the memorable tenth of April, said, that the example set by the metropolis had in effect said: "away with revolution and violence—we will not have the alteration in our statute book written with the trembling hand of fear, or in letters of blood;"—at which expression there was a loud burst of applause.

Mr. Warren proceeded to illustrate his leading position by showing that law without lawyers might be regarded as a mere dead letter: in *them* "it lived, moved, and had its being:" they were the exponents of its existence and agency—its spirit and essence were in action; and those by whom it was actually brought into contact with society, individually—brought home to their businesses and bosoms, whether they would or not—thwarting and defeating their most cherished wishes and purposes—had a great responsibility as representatives and administrators of the law, which they might make a blessing or a curse, lovely or hateful, according as they exhibited it for good or for evil;—that, to the bulk of mankind,

the hue and aspect of the law, were given it by the conduct of those through whose agency it was set in motion, either as the guardian of peace and order and justice, or the vehicle and instrument of trickery and oppression. Therefore, there was true nobleness and dignity in following the law worthily; but it also involved great responsibility, and the necessity of great exertion to attain the requisite amount of experience, discretion and knowledge. He insisted strenuously on the necessity of a person's entering the profession with exalted views of its dignity and power, as likely to place before them a high standard of morality—one which was necessary to resist innumerable temptations and opportunities of going astray. These topics Mr. Warren illustrated and enforced very powerfully, with frequent reference to practical matter arising out of the employment of attorneys and solicitors. He also insisted that the acquisition of professional fitness was a moral duty of high obligation; that an attorney and solicitor entered into a contract with society that he was competent to discharge his duties, but that society was, in a vast number of instances, obliged to take him on trust—to take his word for it—when consulted on sudden emergencies, as in making a will; and Mr. Warren here exhibited a startling sketch of a testator whose anxious intentions on behalf of his children were defeated by the blundering of his incompetent adviser. He said, "that rashly to run into a position where such deadly and *irreparable* mischief must be done, was a great immorality—and to tell a flagrant falsehood to society.

Mr. Warren proceeded to say, that the three classes of administrators of the law were attorneys and solicitors,—the bar—and the judges,—and that attorneys and solicitors were *first* in the rank,—those immediately affecting mankind, "dealing with the *raw material*, of their wants, wishes, rights and wrongs; and that here they were brought into contact with human nature in some of its worst features and characteristics—when under the influence of hatred, vindictiveness, avarice, and the evil passions. "Take care, gentlemen, not to catch fire from your clients on these occasions," said Mr. Warren with great energy, but then play the man, the gentleman, the christian: assert your rights, the dignity of your position: disdain to be the tool of your client, or the mere conduit-pipe of his malignity.

The lecturer proceeded to condemn per-

sons acting on the uncharitable assumption that every man is to be regarded as a rogue till he prove himself honest, and declared that it would inevitably tend to make those so acting take very false and distorted views of men and things, putting the worst construction on the conduct of opponents, and preventing persons coming to a prompt and honourable adjustment of their differences. The rule ought to be reversed, and every man regarded as honest and honourable till he began to show himself otherwise, on the Scriptural maxim—"Charity *hopeth* all things, *believeth* all things." These considerations, Mr. Warren very justly said, were of great practical importance in the conduct of business. He then proceeded to speak of the vast powers for good and evil possessed by the body he was addressing—a body between 13,000 and 14,000 strong; and asked how often their conduct was successfully challenged and impeached in courts of justice for incompetence or want of integrity. The rareness of such occasions, taken into consideration with the unlimited facilities for doing wrong, was surely a proud and decisive proof that the body at large were actuated by a high sense of moral duty, of virtue and honour, and possessed a very great amount of professional knowledge and ability. He eulogized the humane provisions of our laws, which enabled paupers to command the gratuitous services of both branches of the profession;—services rendered as efficiently and cheerfully without fee or reward, as if they were to be repaid by the most splendid remuneration.

Mr. Warren concluded by a very solemn and impressive reference to the only true source of stability and elevation of character—piety and virtue—depending on a constant conviction that all the sundry and manifold changes of the world were the ordering of Infinite wisdom and goodness; and that every thought and action was open to the unsleeping eye of Omniscience. "These considerations," said Mr. Warren, towards the close of his lecture, "alone can confer true elevation of character; extinguish hatred, malice, and all uncharitableness; enable you to withstand every temptation; extract the sting from adversity; *dignify even failure*; and add unspeakable sweetness to success."

These Lectures are evidently calculated to elevate the character of the profession, and especially to benefit its younger members. We trust there will be no delay in the intended publication of the whole course, but that the student will have them early in the Long Vacation.

THE CERTIFICATE TAX.

THE state of the public business before the House of Commons on Tuesday last, prevented the introduction of the bill for the repeal of this impost. The House sat till half-past one, engaged principally on a long-delayed motion for the Abolition of most of the Ecclesiastical Courts and the Reform of the rest; and on a very comprehensive proposition relating to the system of taxation, on one point of which the Chancellor of the Exchequer had a majority against him. A benevolent plan relating to the working hours of a large and useful class, also occupied a considerable time. No wonder, therefore, that the proposed relief to attorneys from an unjust tax, was deferred; but it is evident from the short delay of three days only, that the noble mover of the question earnestly intends to take the sense of the House on the subject.

Further petitions have been presented from the attorneys and solicitors of

Maidstone and Williton.

And from the Procurators of Perthshire under their common seal.

The members who presented the petitions which we have mentioned within the last few weeks are:—

| | |
|------------------|--------------------|
| Lord Courtenay. | Mr. Home Drummond. |
| Sir R. Vyvyan. | Mr. Hale. |
| Captain Fordyce. | Mr. A. Hope. |

A contemporary journal, which pretends to support all measures for the good of the profession, still takes every opportunity of discouraging the exertions for redress on this grievance, merely because its own efforts have been estimated at their true value, and its recommendations disregarded.

SUGGESTED IMPROVEMENTS IN THE LAW.

DEFECTIVE POWER OF SHERIFF TO EXECUTION.

CONSIDERING the late unsuccessful attempt of the sheriff to levy on the property of a foreign duke, it is well worthy consideration whether additional powers should not be conferred on the sheriff, on an affidavit before a magistrate, that the defendant's domicile contains goods and chattels, his property, and that the house is kept locked, so as to prevent a levy.

I know a case of an ex-M. P., who was escorted by a number of neighbours armed, from a house in which he had been evicted under a judgment in ejectment by a mortgagee to another manor belonging to him, and to which he confines himself, barred and bolted every day, Sundays excepted, and the sheriff is un-

able to execute process. Surely these cases demand additional powers for the security of the creditor.

A SOLICITOR.

CITY SEAL.—NOTARIAL CERTIFICATE.

Legal instruments authenticated under the City Seal without a notarial certificate, having been returned from *Demerara* as informal, perhaps some of your readers would be kind enough to point out, in your useful Miscellany, to what places the City Seal ought to be forwarded, and to what others a notarial confirmation of it. It seems that the act for the Abolition of Unnecessary Oaths has varied the practice abroad.

A.

EASTER TERM EXAMINATION.

DIGEST OF QUESTIONS IN BANKRUPTCY AND CRIMINAL LAW.

[For the Questions on Common and Statute Law, Conveyancing, and Equity, and the Practice of the Courts, see page 9, ante.]

BANKRUPTCY, AND PRACTICE OF THE COURTS.

1. Persons liable to the Bankrupt Laws.

What class of men are liable to the Bankrupt Laws?

Under what circumstances may a nobleman become liable to them?

Is a gentleman who sells his own timber, or minerals from his own mines, liable to the Bankrupt Laws, or under what circumstances may he become liable in respect of such selling?

Can a corporation or joint-stock company be made bankrupt?

2. Of the Act of Bankruptcy.

Enumerate the Acts of Bankruptcy, distinguishing such as are voluntary and such as are compulsory.

3. Petitioning Creditor's Debt.

As to the petitioning creditor's debt, what must be its character?

Must it be proveable at the time of suing the fiat?

4. The Fiat.

Will an equitable debt support a fiat?

What steps must a solicitor take where he is employed by a creditor to make a man a bankrupt?

What particulars must he first obtain?

Can a man make himself a bankrupt; and under what act of parliament is it enacted?

What steps must be taken for that purpose?

What are the steps to be taken to make a member of parliament bankrupt?

What are the steps to be taken to make a corporation or joint-stock company bankrupt?

5. Proof of Debts.

Can joint creditors prove on the separate estate of several partners who are bankrupts under one fiat?

Can separate Creditors prove under the same fiat?

How far can each class respectively interfere in the bankruptcy?

Under the same fiat against several persons, how are their separate estates administered?

What course must an equitable mortgagee take to realise his security; or can he prove his debts until he has realised his security?

6. Assignees.

What are the assignees?

What different kinds of them are there?

With whom does the choice of each kind rest?

What are the respective powers of the different kinds of the assignees in administering the estate?

7. Leases, &c.

If a bankrupt holds leasehold property, how far, and under what circumstances, does he continue liable for the rent?

How far can the assignees become liable for the rent?

What must they do to escape liability?

What is "fraudulent preference"?

CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

1. Nature and Definition of Offences.

What is the legal distinction between *murder* and *manslaughter*?

Is the offence of *burglary* in any case punishable with death? If so, state under what circumstances it is so punishable.

Within which of the twenty-four hours must it be committed in order to constitute the offence?

Are there any and what cases in which forgery is now punishable with death?

Is the stealing of title-deeds relating to a real estate criminal, or only actionable?

Are clerks and servants criminally or civilly liable for not duly accounting for moneys received by or paid to them on account of their masters?

2. Jurisdiction.

Before what Court are offences committed at sea to be tried?

What is the law as to the interference of a policeman, or a private person, in the case of an assault or breach of the peace?

3. Evidence.

What proof is requisite in order to excuse a person from punishment on the ground of insanity?

State some of the instances of compulsion or necessity which afford an excuse or justification for an offence.

4. Game Laws.

Who may take and kill game?

Proceedings are brought against a man for

unlawfully taking game by night; when does the night in such case begin and end?

5. Juries.

What is the difference between a grand jury and a petty jury?

What are their respective duties?

6. Proceedings before Magistrates.

What relief is afforded to a landlord in recovering possession of premises otherwise than by ejectment?

How is such relief obtained?

How many justices of the peace must be present to hold a Court of Quarter Sessions?

[Several of the Questions which comprised more than one point, have been subdivided, in order that the articulated clerk, who is preparing for his examination, may see the several parts more distinctly. We have also taken the liberty to arrange them in such order as seemed likely to facilitate the student's research.

We hear repeated condemnations of the useless and discreditable plan of "cramming" for the examination, during the last few months of the clerkship. The knowledge so acquired, if it answer its temporary purpose, fades from the memory. The service intended by the Statutes and the Rules of Court, should be commenced with the articles, and continue throughout the Term—not neglected till the last year.—ED.]

NEW RULE OF COURT.

EASTER TERM, 11 VICTORIA.

It is ordered that no subpoena *duces tecum* be issued for enforcing the production of any record of the acts of any Court deposited in the Public Record Office, pursuant to the statute 1 & 2 Vict. c. 94, or any other document, or minute of proceedings officially filed or record in any Court, and deposited in the Public Record Office, pursuant to the said statute, without an order of the Court out of which the said subpoena shall issue or of some judge thereof.

(Signed)

DENMAN.
T. WILDE.
F. POLLOCK.
J. PARKE
J. PATTESON.
T. COLTMAN.
R. M. ROLFE.
W. WIGHTMAN.
T. J. PLATT.

Read in Court, May, 1848.

[We stated the substance of this rule in a "Note of the Week" some time ago.]

ADMISSION OF SOLICITORS.

Lane, at a quarter past three in the afternoon, for swearing Solicitors.

NOTICE.

Secretary's Office Rolls, May 29, 1848.

THE Master of the Rolls has appointed Wednesday, June 14, at the Rolls Court, Chancery

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Tuesday, the 13th.

ADMISSION OF ATTORNEYS.

Trinity Term, pursuant to Judges' Orders.

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Cobb, Henry William, 5, Great Ormond Street; and Salisbury
 Fisher, Edward Freeland, 2, Sussex Terrace; and Long Melford
 Marshall, John Thomas, 12, Southampton Street, Strand; and Beckenham
 Perkin, Henry Thornton, Tavistock; and Streatham

James Cobb, Salisbury.
 Richard Almack, Melford; C. F. Skirrow, Bedford Row.
 Henry Edward Stables, Copthall Court; R. Gadsden, Bedford Row.
 Thomas Leigh, George Street, Mansion House.

[The Michaelmas Term List will be given in due time.]

TAKING OUT AND RENEWAL OF CERTIFICATES.

Last day of Trinity Term.

Queen's Bench.

Bridge, George Thomas, 78, York Road, Lambeth; Weymouth.
 Challinor, William, Leek.
 Creswell, Edward, Manchester.
 Day, Henry, Bristol.
 Eade, Joseph, Clapham Rise, and Clapham Common.
 *Harman, Chas. Henry, late of Fenchurch Street, now of No. 4, Winkworth Buildings, East Road, City Road.
 Marsh, John, Wansfield.
 Nind, Wharton Pitt, 8, Chapel Place; Ramsgate; Leytonstone.
 Parker, Thomas, 122, Kuowley Street, Preston.
 Welch, Charles Hewit, Ashborne.
 Wheeldon, William Parker, Shepherd's Bush; Notting Hill.

Chivers, Charles Trigg, 16, Cromer Street, Gray's Inn Road.
 Carrighan, Terentius, Pancras Vale, Hampstead Road.
 Hancock, Walter, Colyton.
 Hewson, Frederick, Wington, Balham Hill.
 James, James Weekes, Dursley.
 Roberts, Edward, St. Martin's-le-Grand; Bristol; Paddington.
 Summers, William Henry, 10, Holland Place, Camberwell.
 Tucker, William, Beulah Cottage, Clifton Street, Wandsworth Road, Surrey.
 Tweed, George Task, 4, Alfred Place, Bedford Square.
 Wright, Charles, 5, Great Dover Road; Fenchurch Street; Gracechurch Street; Dowgate Hill.
 Young, Henry Thomas, 16, Cumberland Street.

NOTES OF THE WEEK.

RECENT APPOINTMENT.

Applications to a Judge at Chambers on the 17th day of June.

Appleyard, James, 24, Wakefield Street, 3, New Inn.
 Brooks, John, Great James' Street, Bedford Row.

THE office known in the profession as "the Attorney-General's Devil," vacant by the appointment of Mr. Waddington to the situation of Under-Secretary for the Home Department, has been conferred on Mr. Welsby of the North Wales and Chester Circuit. Mr. Welsby has been long known to the profession as an

* This gentleman to be admitted in Chancery, the others in Queen's Bench.

able and laborious reporter of the proceedings of the Court of Exchequer. He also fills the office of Recorder of Chester.

TRINITY TERM EXAMINATION.

The number to be examined on Tuesday next, the 6th instant, is about 95. Sir F. Durrant will preside.

PROGRESS OF LAW BILLS IN PARLIAMENT.

House of Lords.

NEW BILLS IN PROGRESS.

Joint-Stock Companies. For 2nd reading.
 Incumbered Estates Ireland. Re-committed.
 Clergy Offences. For 2nd reading.—Bishop of London.
 Amendment of Criminal Law. In Select Committee.—Lord Campbell.
 Unnecessary Actions Prevention. In Committee.—Lord Campbell.
 Bail by Coroners for Manslaughter. In Committee.—Lord Campbell.
 Bankruptcy Law Amendment. For 2nd reading.—Lord Brougham.
 Parliamentary Proceedings Adjournment. In Committee.
 Removal of Poor. In Committee.

House of Commons.

NEW BILLS IN PROGRESS.

Administration of Justice out of Sessions. (No. 1). In Select Committee.—Attorney-Gen.

Special and Petty Sessions. In Select Committee.—Attorney-General.
 Protection of Justices. In Select Committee.—Attorney-General.
 Administration of Justice on Summary Convictions. (No. 2). In Select Committee.—Attorney-General.
 Agricultural Tenant-right. For 2nd reading.—Mr. Pusey.
 Roman Catholic Relief. In Committee.—Mr. Anstey.
 Public Health. Consideration of Report.—Lord Morpeth.
 Game Certificates. In Committee.—Mr. Colville.
 To Establish an Appeal in Criminal Cases. For 2nd reading.—Mr. Ewart.
 Exempting Small Tenements from Rates.—Mr. P. Scrope. For 2nd reading.
 Parliamentary Electors Rates.—Sir De Lacy Evans. In Committee.
 Remedies against the Hundred. Sir W. Clay.—For 2nd reading.
 Vacating Seats of Insolvent Members.—For 2nd reading.—Mr. Moffatt.
 Borough Elections. In Committee.

NOTICES OF NEW BILLS.

Inprisonment before Trial.—Lord Nugent.
 To Prevent Bribery at Elections.—Sir J. Pakington.
 Game Laws.—Mr. Bright.
 Ecclesiastical Courts.—Mr. Bouverie.
 Rights of Outgoing Tenants.—Mr. S. Crawford.
 Friendly Societies.—Mr. F. O'Connor.
 Extending Election Franchise.—Mr. Wyld.
 Assignment of Policies. Mr. Fagan.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Re Hare. March 23, 1848.

COSTS.—ACTION.—TAXATION.

If, on an order to tax a bill of costs, after action brought, the costs are reserved, they will follow the result of taxation, unless in a special case. After taxation it is too late to object, that the order ought not to have been special.

THIS was a petition arising out of the taxation of a bill of costs, amounting to 78l. 10s. after action brought, and judgment entered up for the amount. Upon the taxation, owing to a question of retainer against the solicitor, the bill had been reduced to 32l. 10s.

Mr. Sydney Smith contended, that the petitioners were not entitled to the costs of the ac-

tion, or the present petition. The special application to tax had been made necessary to this case by a delay of more than three months, which had taken place between the delivery of the bill and the presenting the petition, and which had led to the action being brought. He referred to *Hagard v. Lane*, 2 Mer. 285, and *Lockhart v. Hardy*, 4 Beav. 224.

Mr. Turner and Mr. Hitchcock, for the petitioner, said, that if a special application was unnecessary, that objection should have been urged when the former order was made, *In re Bracey*, 8 Beav. 266; and that as to the costs of the action, where they were only generally reserved, as was the case here, some special ground must be shown to prevent their following the costs of the taxation.

Lord Langdale expressed his assent to this view, and accordingly gave the petitioner the costs both of the taxation and of the action.

Vice-Chancellor of England.*Williams v. Davies.* March 27, 1848.**ABATEMENT OF SUIT.—63RD ORDER OF MAY, 1845.***The 63rd Order of May, 1845, applies as well to abatements subsequent as to those previous to the date of those orders.*

A SUIT had never been revived since the year 1831, when it had abated by the death of the plaintiff, and a motion was now made, that the legal representative of the deceased plaintiff might be ordered to file a bill of revivor within 14 days, or that the suit stand dismissed.

Mr. *Renshaw*, for the motion, contended, that the 63rd Order of May, 1845, had a retrospective operation; the words were—"In cases where a suit abates by the death of a sole plaintiff, the Court upon motion of any defendant made on notice served on the legal representative of the deceased plaintiff, may order that such legal representative do revive the suit within a limited time, or that the bill be dismissed."

The *Vice-Chancellor* said, that taking the 63rd Order in connexion with the 3rd Order, which provided, that "Those orders were, as to all suits then depending or thereafter to be commenced, to take effect on the 28th day of Oct., 1845," he was of opinion that the 63rd Order applied, not merely to suits which should abate after the date of those orders, but also to suits which had abated, and he should make the order.

Court of Queen's Bench.

(Before the Four Judges.)

Reid v. Satter. Trinity Term, 1848.**COSTS.***The Master is in future to allow term fees for watching the paper.*

THIS case had been set down on the special paper. In the course of the last term, the Court made a selection from the special paper of such cases as were deemed proper to be heard at once. This case was one of the number. When it was called on nobody appeared to argue it, and it was ordered to be struck out of the paper.

Mr. *Bovill* now moved that it should be restored. There was no intention to abandon it, but as it had stood 30 off on the list, the attorney had not expected it to come on, and had not delivered any brief.

Lord *Denman*, C. J. That is not an excuse. The attorney is bound to attend to the business of the Court, and we cannot grant this application without encouraging disregard of the lists, which, from time to time, for the convenience of public business, we think fit to form, and of the notices we give as to our arrangements.

Mr. *Bovill*. The non-delivery of the brief did not arise from any negligence of the attorney, but from the discretion which the Masters had lately thought fit to exercise in the allow-

ance of costs. The cause was 30 off. Under ordinary circumstances it was not likely to be heard during the term. Of late the Masters had refused to allow fees for watching the paper in each term in which the case stood on the paper, and consequently the change of the position of this cause on the paper had not been known.

Per Curiam. Under these circumstances the case may be restored to the paper. The term fee for watching the paper is for the future to be allowed.

Queen's Bench Practice Court.*Ginger v. Pycroft.* May 9th & 12th, 1848.**NOTICE OF TRIAL, FORM OF.—SETTING DOWN A CAUSE FOR TRIAL.—PRACTICE.**

The form of a notice of trial is immaterial, if it be delivered in time, and clearly and unequivocally inform the defendant that the plaintiff intends to proceed to trial at a certain specified time.

It is not necessary that notice of trial should have been given before a cause is set down for trial.

THIS was a rule calling on the plaintiff to show cause why the trial and all subsequent proceedings herein should not be set aside for irregularity, with costs. It appeared that issue was joined in this cause in Michaelmas Term, 1847, and notice of trial given for the sittings after that Term. In the same Term the defendant obtained an order postponing the trial until the Sittings after Hilary Term, and the cause was not set down for trial until the 22nd January for the last Sittings after Hilary Term, when, not being reached, it was made a *remanet* to the first sittings in Easter Term. On the 8th of April, the plaintiff's attorney served the defendant with a notice in the following words: "Take notice of trial in this cause for the first Sitting in next Easter Term, to be holden in Westminster Hall, in the county of Middlesex, the same having been made a *remanet* from last Hilary Term." The first sittings in Easter Term began on the 17th of April, and on the 18th the cause was tried, and a verdict found for the plaintiff. The present rule was obtained on the ground that no sufficient notice of trial had been given before the cause was set down for trial, as the first notice was rendered void by the order of the judge postponing the trial; that the notice given on the 8th of April was not a good notice of trial; but even if it were so in itself, yet that it was inoperative, as being given after the cause was set down for trial.

Addison showed cause, and contended that there had been no irregularity in the case. It was true that no fresh notice of trial had been given for the Sittings after Hilary Term, but that was not necessary, as the trial had been stayed by the order obtained by the defendant himself; but even if this be not so, there was a good notice of trial given on the 5th of April. It

is said by the other side that this notice is bad, because it is a continuance of a former, and not an original notice; but there is nothing in the objection—no precise or particular form of notice is requisite, if it sufficiently inform the defendant that the plaintiff intends to try the cause at a particular time. In the present case the notice given on the 8th of April contains all the requisites of an original notice, with the addition of the words "The same having been made a *remanet* from last Hilary Term;" but this will not vitiate an otherwise good notice. There is a case of *Tyte v. Stevenson*, 2 W. Blac. 1299, in which Mr. Justice Blackstone says, "there is no settled precise form of notice required. Sufficient if it apprizes the defendant with certainty that the plaintiff means to proceed to trial. It is indifferent whether he says 'I renew' or 'I continue' the former notice, provided there be sufficient time according to the rules of the Court." Now, in the present case there was ample time, and the notice was in all respects a good notice as an original notice. Then, secondly, it is said, that the cause could not be properly entered for trial until a good notice had been given, and therefore, that as the notice of trial for the Sittings after Michaelmas Term was, as they contend, rendered inoperative by the order of Mr. Justice Patteson postponing the trial until the Sittings after Hilary Term, a fresh notice was rendered necessary before the cause could be entered, and that the notice of the 8th of April of an otherwise good notice was of no avail, as there was an irregularity in entering the cause without a notice of trial having been previously given. Now, there is nothing in this objection; there is no rule of practice or any authority to show that this is necessary; in fact the practice is the other way.

Pickering. The short point in this case is, first, whether a cause can be regularly set down for trial without a good notice having been first given, for if it cannot, no subsequent notice if the cause be made a *remanet* can avail, for the cause could not properly have been made a *remanet*. In this case it is said there was a notice, but that became a nullity by the order of Mr. Justice Patteson, so that a fresh notice was required before the cause could regularly be set down for trial for the Sittings after Hilary Term. *Ellis v. Trusler*, 2 W. Blac. 798. If the cause had been properly made a *remanet*, no fresh notice was necessary, but it is otherwise where the trial of the cause is put off to the next sittings or assizes by a rule of Court. *Jacks v. Mayer*, 8th Term rep. 245. [*Coleridge, J.* Suppose a cause was set down for trial at the Spring Assizes for York, without a good notice, and the cause was made a *remanet* to the next assizes, and a good notice be given for the next assizes, could you not try?] *Pickering*. I contend that there must be a regularity in the entry, by notice having been given before that entry, or a subsequent trial is void. Then it is also contended, that if this were not so, that still the notice of the 8th of April was a

bad notice, as a continuance of a former bad notice.

Cur, ad. vult.

May 12.—On this day Mr. Justice Coleridge said—There was a case of *Ginger v. Pycroft*, in which a rule nisi had been granted for setting aside a verdict for irregularity, on the ground that the cause had been irregularly set down for trial, without notice of trial being previously given. It appeared that the cause had been set down in Hilary Term for the last Sitting, and made a *remanet* to the first Sittings in Easter Term, and in due time before those Sittings, a notice of trial was given, in which were inserted the words, "the same (that is, the cause) having been made a *remanet* from last Hilary Term;" so that it did not purport to be an original notice. An objection was taken to this notice on that ground, but it was not much insisted in on the argument of the rule, nor does it seem to me to be of any weight: the case of *Tyte v. Stevenson*, 2 W. Blac. 1299, which was cited by Mr. Addison, is a satisfactory authority, that the form of a notice of trial is immaterial if it be delivered in time, and clearly and unequivocally inform the defendant that the plaintiff intends to proceed to trial at a certain specified time, and in that case a notice purporting to be a continuance only of a former notice, was held to be good as an original notice. It was also argued, that no cause can be properly set down for trial until notice of trial has been given. No authority was cited for this position; two cases of *Jacks v. Mayer*, 8 T. R. 245, and *Ellis v. Trusler*, 2 W. Blac. 798, were mentioned that do not apply to that point, nor can I find such a rule laid down anywhere in the books of practice. Certainly in by far the greater number of instances, notice of trial is in fact given before the cause is set down, because in by far the greater number of instances it is endorsed on the issue delivered; but this is not necessary, nor does the marshal inquire whether notice of trial has been given before he receives the record. Looking at the principle on which notice is required, I do not see the necessity of holding the rule so strict; therefore, I think this rule ought to be discharged, and as it was an experimental motion, on the ground of irregularity, with costs.

Rule discharged with costs.

Common Pleas.

Tabley v. Stanhope. Easter Term, 1848.

REPLEVIN BOND.—COUNTY COURT RECORD.
—PLEA OF NUL TIEL RECORD.

The record of a County Court stating that a plaint had been struck out for want of jurisdiction, &c., will not support an amendment in a declaration upon a replevin bond, that it was considered and adjudged by the County Court that the plaintiff in the plaint should take nothing by his writ, &c., under an issue joined upon a plea of nul tiel record.

THE plaintiff in this case had been the defendant in a replevin plaint in the Whitechapel District County Court, and now sued as the assignee of the replevin bond, the defendant being one of the sureties. The declaration, after setting out the condition of the bond, and stating that a plaint had been levied against the now plaintiff in the County Court, and proceedings taken thereon, then went on to allege that afterwards, and before the commencement of this suit, on, &c., it was considered and adjudged that the plaintiff in the said plaint should take nothing by his writ, as by the record and proceedings thereof more fully appears, &c. Plea, *nul tiel record*, upon which issue was joined.

Lush now moved for the judgment of the Court in the plaintiff's favour, and produced in support of the declaration a record of the proceedings in the County Court, returned under a writ of *certiorari* which had been issued for the purpose, wherein it was stated that the plaint had been "struck out for want of jurisdiction, on the ground of a disputed title having been sworn to." [*Cresswell, J.* How do you make out from the record that a judgment has been given as alleged in the declaration?] The record is in the usual form of a judgment of nonsuit. The judge, as appeared from the 89th and 121st sections of the County Court Act, 9 & 10 Vict. c. 95, had jurisdiction to try the case, and must be taken to have adjudicated in the plaint when he ordered it to be struck out. [*Cresswell, J.* Then you treat the case as having been decided when the judge expressly says, "I have no power to decide." *Willde, C. J.* The question is, does "struck out" amount to an adjudication?]

J. Brown, contra, was not heard.

Per curiam. The words "struck out" cannot be treated as a judgment. The record, too, expressly states, that the plaint was struck out for want of jurisdiction, and how can that be considered as supporting the allegation of adjudication in the declaration?

Judgment for the defendant.

Court of Exchequer.

Jones v. Brown. May 9th, 1848.

COUNTY COURTS ACT, 9 & 10 VICT. C. 95.
PRIVILEGE OF ATTORNEYS PLAINTIFFS.
COSTS UPON APPLICATION FOR A RULE.

The County Courts Act, 9 & 10 Vict. c. 95, does not apply to attorneys suing in their own right; they still retain the privilege of proceeding in the Superior Courts for sums under 20l.

This Court will not discharge a rule with costs upon the ground only of its having been moved for with costs.

A RULE had been obtained calling upon the plaintiff to show cause why the defendant should not be at liberty to enter a suggestion on the roll to deprive the plaintiff of costs.

Pollock, G., on behalf of the plaintiff, now showed cause, and observed that the cause of action arose within the jurisdiction of the County Court of Surrey, in respect of a bill of exchange for 18l. 13s. 4d., and was tried before the Sheriff of Middlesex, upon a writ from this court. The plaintiff, who was indorsee of the bill, was an attorney, and the question was, whether an attorney plaintiff is bound to sue in the County Court, at the risk of losing his costs. Although, under the 9 & 10 Vict. c. 95, an attorney defendant may perhaps be sued in the County Court, that statute does not compel an attorney plaintiff to sue in such Court. The question turned upon the 67th and the 129th sections of 9 & 10 Vict. c. 95, and had already been argued and decided in the Queen's Bench, in *Lewis v. Hance* and *Jones v. Savage*, reported *ante*, page 68. Lord Denman, C. J., in giving judgment in that case, said, that reading together the 67th and the 129th sections, the legislature could not have intended to take away the privilege of an attorney plaintiff, and subject him to the risk of costs if he sued in a Superior Court; and that, however desirable therefore it might be that attorneys should be subject to that risk like all other individuals, the legislature has not so said. By the 58th section of the County Court Act, jurisdiction is given: that section enacts that all pleas of personal actions, when the debt or damage claimed is not more than 20l., may be holden in the County Court without writ; and all such actions brought in the said Court shall be heard and determined in a summary way. Then by the 128th section, all actions and proceedings which before the passing of this act might have been brought in any of her Majesty's Superior Courts of Record, when the plaintiff dwells more than 20 miles from the defendant, with certain exceptions not material to this case, may be brought and determined in any Superior Court, at the election of the party suing or proceeding, as if this act had not been passed. From that section alone he was entitled to assume that this act does not refer to attorneys at all, and that they retain their liberty to sue in the Superior Courts, and are not thereby deprived of their costs. Then comes the 129th section, which enacts, that if any action shall be brought in the Superior Courts for which a plaint might be entered in the County Court, and a verdict shall be found for the plaintiff for less than 20l. upon a contract, the plaintiff shall have judgment to recover such sum only, and no costs, unless the judge certify. It is clear these sections do not operate in any way to deprive an attorney plaintiff of the privilege which before the passing of the act he enjoyed. But the defendant will principally rely upon the 67th section:—"That no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any Court holden under this act." The words are, "exempted from the jurisdiction." These words cannot apply to plaintiffs, because plaintiffs are in all cases exempt from jurisdiction;

they require no privilege to exempt them from the jurisdiction of any Court, for it is by their own act alone that they come within their cognizance, that is the ground of the decision in *Lewis v. Hance* and *Jones v. Savage*, and also of *Board v. Parker*, 7 East, 47. The latter case was decided upon 39 & 40 G. 3, c. 104, which provides, by s. 12, that if any action or suit shall be commenced in any other Court than the said Court of Requests, for any debt recoverable in the Court of Requests, then the plaintiff shall not by reason of the verdict for him have or be entitled to any costs; and by s. 10, that "no privilege shall be allowed to exempt any person from the jurisdiction on account of his being an attorney." There the language is fully as strong as that of the present statute, and yet it was held, that a plaintiff attorney did not lose his privilege, and was not bound to sue in the Court of Requests; and Lord Ellenborough, in giving judgment, said, the words exempting from the jurisdiction were applicable to defendants only, and not to plaintiffs, because no plaintiff can be said to be exempt from the jurisdiction; and he there referred to *Gardner v. Jessop*, 2 Wils. 42, which was a decision upon the statute 23 G. 2, c. 33, establishing the Middlesex Court of Conscience Act, in which the words were equally general with the 39 & 40 G. 3, c. 104, and also with the statute now under consideration, the 9 & 10 Vict. c. 95. An attorney might commence his action by attachment of privilege, and when that proceeding was abolished by the Uniformity of Process Act, and the writ of summons was introduced, it was contended, that as he could have his attachment of privilege no longer, the privilege of suing in the Superior Courts no longer existed; but Littledale, J., in giving judgment in *Dyer v. Levy*, 4 Dow. 633, said, that although the act of parliament had abolished the particular form of suing, the privilege itself was not taken away; and he there held, that an attorney plaintiff was not within the Blackheath Court of Requests Act, (the 10 G. 3, c. 29, s. 3,) on the ground that he was not specially mentioned. He also referred to *Wright v. Skinner*, 1 M. & W. 144, where the judgment of Parke, B., was to the same effect, and called the attention of the Court to a very early case upon the statute 21 Jac. 1, c. 33, *Armington's case*, Palm. 403. There also the privilege was held good, although the words of the statute were far more general than in the present case. The next case was that of *Wiltshire v. Lloyd*, 1 Doug. 381, also supporting the decision of *Gardner v. Jessop*, and to that case was appended a note of the case of *Hussey v. Jordan*, B. R. T., 25 G. 3, in which case it was determined that when the plaintiff was an attorney, the defendant was not entitled to the benefit of the County Court Act, (the 23 G. 2, c. 33,) though resident within the jurisdiction of the Court.

He was then stopped by the Court.

Pearson, in support of the rule. The intention of the act was to take away every pri-

vilage whatever. This Court would not be bound by the late decision of the Court of Queen's Bench, unless it entirely coincided with that decision; however, in the present case there was no appeal. He agreed with the cases which had been cited, that the privilege of an attorney is not to be taken away, unless so declared, and contended that by the 57th section the privilege of the attorney no longer existed; that section declared that (with exceptions not material to the present question) no privilege shall be allowed to any person to exempt him from the jurisdiction of the act. The question turned upon the words "exempt him from the jurisdiction." The meaning of the legislature in using those words was, that no person (other than as excepted) shall, by reason of any existing privilege, be allowed to avoid the operation of the statute in his own particular case. Then came the 129th section, which enacts, that if any action shall be commenced for any cause, &c. There the words are, any action for any cause for which a plaintiff might have been entered in any Court holden under this act. He submitted it could not be successfully contended that the present case was not within the operation of those words. It never could have been the intention of this act that attorneys should have the power of buying up bills of exchange in order to bring actions upon them in the Superior Courts for the purpose of obtaining costs, thereby depriving defendants of that protection from costs which the legislature evidently intended to afford them. The present action is not one for work and labour as an attorney, not for goods sold, or for any other matter between the immediate parties to any contract, not by the drawer against the acceptor of a bill of exchange, but it was an action on a bill of exchange by an attorney indorsee. If the Court held that an attorney plaintiff was still entitled to the privilege of suing in such cases in the Superior Courts, this statute would become in a great measure inoperative.

Pollock, C. B. There is a current of authorities continuing from a long time back, showing that the privilege of an attorney is not taken away, unless by express words of the statute. I must say that I do not think it is an inconvenient mode of coming to a decision, to presume that the legislature was aware of the state of the law at the time this act was passed, and the law having already decided that by the use of certain words in an act of parliament the privilege of an attorney to sue in the Superior Courts is not taken away, this Court cannot suppose that the legislature intended more by the use of those words in this statute than they had already been construed to convey in others. We must either overrule all the decided cases, or we must presume that the legislature meant something more in the use of the words than was meant by the use of the same words in former statutes,—words well known in Westminster Hall, and to which the Courts have attributed a specific meaning. To neither of these conclusions

can we come, and therefore this rule must be discharged.

Pearson submitted that it should not be discharged with costs.

Pollock, G. The rule was applied for with costs, and he submitted must therefore, if discharged, be discharged with costs. There was an old and well-established practice of the Court, that whenever a rule was applied for with costs, it should be discharged with costs. The application was made in reference to the construction of an act of parliament in the very words of a previous act upon which there had been a decision.

Pearson. That practice as to costs only applied to irregularities, and was not of that universal character contended for.

Pollock, C. B. It certainly has been very much the practice, where a party applies for a rule with costs, to discharge such rule (if discharged) with costs. Here, however, the plaintiff having acted according to the current of authorities, should not be put to unnecessary costs; and if by this application such costs have been incurred, the party incurring them should pay them.

Rolfe, B. I think that is a much more reasonable ground than that of discharging a rule with costs because costs have been asked for.^b

Parke, B., and Platt, B., concurred.

Rule discharged with costs.

Jones v. Sir Wyndham Anstruther, Bart.

Jan. 29, 1848.

SCOTCH SEQUESTRATION ACT, 2 & 3 VICT. C. 41.—PRIVILEGE FROM ARREST UNDER.

A warrant of protection under the 2 & 3 Vict. c. 41, is sufficiently signed by the sheriff substitute to entitle the debtor to protection from arrest in Great Britain.

THE defendant having become a bankrupt in Scotland, had obtained, under the Scotch Sequestration Act, 2 & 3 Vict. c. 41, a warrant signed by the *sheriff substitute* for the purpose of freeing him from arrest in Great Britain. The statute requires it to be signed "by the *sheriff*." The sheriff in Scotland is somewhat equivalent to the Lord Lieutenant in England, he performs no duties in the court, the sheriff depute is the responsible party, and the sheriff substitute the actor. The defendant had, since obtaining the warrant of protection, been arrested in this country, and upon application to Mr. Baron Rolfe at chambers, the summons was dismissed. Under these circumstances,

Montagu Smith had obtained a rule calling

^a See *Jones v. Smith*, 2 Jur. 469; *Johnson v. Bray*, 2 B. & B. 698; *Parker v. Vaughan*, 2 B. & P. 29; *Stokes v. White*, 3 Dow. 703.

^b The Court, on the following day, refused to discharge a rule with costs upon the ground that it had been applied for with costs.—
REPORTER.

upon the plaintiff to show cause why defendant should not be discharged out of custody, on the ground that he had been made a bankrupt in Scotland, and had a warrant which freed him from arrest in Great Britain.

Temple showed cause. This case came before Mr. Baron Rolfe at chambers, who dismissed the summons on the ground that it did not appear there was sufficient to give the sheriff jurisdiction. [*Parke, B.* The sheriff in Scotland is an honorary title; the sheriff substitute is the party who holds the Court.] Since the matter was heard before the learned judge, the defendant had supplied an affidavit in which it was said that the sheriff substitute had the same power as the sheriff himself. But in these cases it was intended that the protection should be signed by the sheriff himself, and not by the sheriff substitute. He contended that the statute made a distinction between them by pointing out separate matters to be done by each. He referred to the 13th, 27th, 45th, 49th, and 57th sections. But supposing the signature of the sheriff substitute to be sufficient, it must appear that all the requisites of the 58th section had been complied with, which did not appear to have been the case. The petition was improperly addressed to the sheriff or sheriff substitute. It did not appear that at the meeting there was any offer of composition, and before the sheriff has power to grant the protection it must be represented to him that there has been such an offer. *Parke, B.,* referred to 1 & 2 Vict. c. 119, 20 G. 2, c. 43.]

Montagu Smith, in support of the rule. The sheriff substitute is the acting sheriff for the division in which the protection was obtained. According to the Scotch Law he is the person who alone exercises the jurisdiction. He referred to the 45th and 66th sections, and contended that in using the word "sheriff" it was clear the statute spoke of such person as might be performing the duties under the statute according to the Scotch Law, whether he was sheriff, sheriff depute, or sheriff substitute. It was not necessary that there should be any offer of composition before protection could be granted; that might be done at the first meeting, or at any subsequent meeting for the purpose of renewing the certificate.

The Court were of opinion that the signature of the sheriff substitute was sufficient, that there was nothing in the other objections, and made the rule absolute.

Court of Bankruptcy.

In re Howard, Exparte Underwood. 20th May, 1848.

TRADER DEBTOR'S SUMMONS.—INSUFFICIENCY OF AFFIDAVIT.—PRACTICE.

An affidavit for summoning a trader debtor, stating that the debtor is indebted on certain bills of exchange, is insufficient, unless

it be alleged that the bills were dishonoured and the amount not paid.

THE debtor (Howard) was summoned before Mr. Commissioner Goulburn, under the statute 5 & 6 Vict. c. 122, to admit or deny a claim made by a creditor named Underwood. The summoning creditor filed an affidavit stating that the debtor was indebted to him on three several bills of exchange, respectively drawn by the defendant, accepted by a third party, and indorsed by the debtor (Howard) to the summoning creditor, in consideration of goods sold and delivered.

Sturgeon, on behalf of the trader debtor, objected to the sufficiency of the affidavit. By General Rules and Orders, Nov. 12, 1842, r. 25, "every affidavit for summoning a debtor under the said act, shall state the nature of the debt with the same degree of certainty and precision as is now required in an affidavit to hold to bail by order of a judge in the Superior Courts at Westminster." Here the affidavit did not show that the bills had been presented to the acceptor, or that they were dishonoured. It was consistent with all that was stated in the affidavit that the bills were paid by the acceptor at maturity. He cited *Buckworth v. Levi*, 7 Bing. 251.

Lawrance, for the summoning creditor, *contra*. The affidavit is sufficient. If the bills had been paid by the acceptor, Underwood

could not swear that the drawer was now indebted to him, and would be liable to a prosecution for perjury. Moreover, the affidavit shows the consideration for which the bills were given, namely, goods sold and delivered to the debtor, which renders the affidavit sufficient.

Mr. Commissioner Goulburn. The proposition for which the debtor's counsel contends seems to me to be supported by the authorities which are collected in the 1st vol. of Harrison's Digest, tit. *Arrest*, p. 344. The general statement, that a defendant is indebted, has been held insufficient, and the affidavit does not show that the acceptor has not paid the amount of the bills drawn by Howard. The suggestion, that the affidavit sufficiently discloses a debt for goods sold and delivered to the debtor, is met by the fact, that the creditor has not given any account of the goods alleged to be sold and delivered in his particulars of demand, as required by the statute. The claim, as founded on the bills, therefore, is not sufficiently stated in the affidavit, because it does not appear that the bills were dishonoured, and the creditor cannot proceed as for goods sold and delivered, because he has not furnished the debtor with particulars of his account for goods. The objection taken to the summons must therefore prevail.

Summons discharged with costs.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRINCIPLES OF EQUITY.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.]

ACCOUNT.

1. A builder entered into a contract to build an union workhouse on certain specified terms, but became bankrupt before it was completed, and it was finished by the guardians. A bill by the assignees to have an account taken of what had been done, was dismissed with costs, on the ground that it was not a proper subject for a suit in equity. *Androse v. The Dunmow Union*, 9 Beav. 508.

2. Under a decree to take an account of the testator's debts, and to compute interest on such of his debts as carried interest, the Master has not jurisdiction to allow compensation to a party for unliquidated damages on a breach of covenant; but, upon an application to the Court, proper directions will be given for the

investigation of such a claim. *Cox v. King*, 9 Beav. 530.

ADMINISTRATION AD LITEM.

The grant of letters of administration *ad litem* makes the grantee complete representative of the estate to the extent of the authority which the letters purport to confer, and a decree obtained against such grantee is therefore binding upon any one who may afterwards take out general administration to the estate. *Davis v. Chanter*, 2 Phill. 545.

Cases cited in the judgment: *Brant v. King*, in 1 Wms. Executors, 328; *Faulkner v. Daniel*, 3 Hare, 208; *Croft v. Waterton*, 13 Sim. 655; *Harris v. Milburn*, 2 Haggs. 64.

ANNUITIES.

Insufficiency of fund.—Trust for sale or mortgage of real estate—Where by will certain annuities were charged on personal estate and the annual rents and profits of freehold and copyhold estates, and the personal estate was exhausted, and the rents and profits of the real estate were insufficient to pay the arrears of the annuities: *Held*, that such arrears should be raised by sale or mortgage of the real estates. *Fentiman v. Fentiman*, 34 L. O. 381.

AWARD.

See *Jurisdiction*, 7.

COLLEGE FELLOWSHIPS.

Equality of merit.—Meaning of “*In dotio constitutus*.”—A provision in the statutes of a college that, among candidates for a particular fellowship, those should be preferred who should be born nearest to a particular place, *held*, to be operative only in case of equality of merit.

Where by college statutes one of the qualifications of a fellow was, that he should be “*in sacerdotio constitutus*” before his admission, and the general practice of the college was to admit fellows elect on the expiration of a six months’ probation from the time of their election, but the statutes prescribed no particular limit to the period of probation; an objection to an election, that the word “*sacerdotium*” meant the order of priesthood, and that the party elected was not, at the time of his election, old enough to be capable of taking even deacon’s orders within 6 months, was overruled, it being *held*, 1st, That “*sacerdotium*” meant holy orders generally; and, 2ndly, That the fellow elect might, either by a faculty from the archbishop, or by an extension of the period of probation, which the college were willing to grant, procure deacon’s orders within the necessary period. *University College, Oxon, in re; Ex parte Moorsom*, 2 Phill. 521.

Cases cited in the judgment: *Ex parte Wrangham*, 2 Ves. 609; *Robson’s case*, 1802, temp. Lord Eldon; *Catherine Hall case*, 2 R. & M. 590.

CREDITOR.

1. **Release of one security by substitution of another.**—After the death of the obligor in a bond, his executor and devisee in trust under his will, by which he had charged his real estates with payment of his debts, gave a new bond in his own name for the same amount to the obligee, who thereupon delivered up the original bond and signed an indorsement thereon, stating that he had accepted the new bond “in lieu of” it. The obligor in the new bond having afterwards become bankrupt, *held*, in a creditor’s suit for administration of the testator’s estate, that the obligee had no right of proof upon the original bond. *Shore v. Shore*, 2 Phill. 378.

2. **Qualification of admission of assets.**—**Priorities.**—In a creditor’s suit for the administration of the assets of an intestate who had joined in a bond as a surety, the bond creditor, being aware of the suit, omitted to prove till the time limited by the advertisements for creditors to come in had expired; a decree on further directions had been made, the administratrix had admitted assets, and the principal debtor in the bond had become bankrupt: *held*, that he might still be let in upon terms, the fund remaining undistributed.

An admission of assets by the administratrix, embodied in an order made on a petition in the cause, qualified by a declaration in a subsequent order.

Arrangement of priorities between simple

contract creditors coming in within the time limited by the advertisements and bond creditors coming in subsequently. *Brown v. Lake*, De G. & S. 142.

See *Marshalling Assets*.

DEED.

Equality of interest.—Upon a separation between A. and B., (husband and wife,) a deed was executed, making a provision for the wife, and all and every the children of A. by B., who should attain 21. A reconciliation took place, and another child was born: *held*, upon the construction of the deed, that such last-mentioned child did not participate in the provision.

This court, when it can consistently with the instrument executed by the parties, will do that which is the highest equity, and make an equality between parties who stand in the same relation; but it cannot do that contrary to the plain meaning of a deed. *Hulme v. Chitty*, 9 Beav. 437

EQUITABLE FEE.

Joint tenancy.—*Held*, that a devise to trustees in fee in trust for the use and benefit of A. B. and C., the rents to be paid for their maintenance, and the survivors and survivor of them share and share alike, created an equitable estate in fee in A. B. and C., as joint tenants. *Moore v. Claghorn*, 34 L. O. 406.

EQUITY BETWEEN REAL AND PERSONAL REPRESENTATIVES.

Where a young man, just of age, was imposed upon in the sale of an estate: *held*, that his heir was not precluded from suing to set aside by the circumstance of the party defrauded having by will bequeathed to a third party the balance of purchase money remaining due at his death.

The principle of there being no equity as between real and personal representatives, has no reference to such a case; in which the Court proceeds upon the ground, that as the transaction ought never to have taken place, the rights of the parties are, as far as possible, to be placed in the situation in which they would have stood if there had never been any such transaction. *Bellamy v. Sabine*, 2 Phill. 425.

FRAUD.

1. **Family arrangement.**—If an arrangement between two parties is, on general principles, fair as between them, it is not invalid merely because it may have been concocted and brought about by a third party with a fraudulent intention of benefiting himself.

In such a case, so far as regards the third party, the whole may be looked upon as one transaction, in order to judge of his motives and to put a construction upon his acts; but, as regards the other two, who, though affected by one part of the transaction, may be total strangers to the other part, it is not only not necessary, but it would be unjust, to consider every part of the transaction affected by objections which, in fact, apply only to particular portions of it. *Bellamy v. Sabine*, 2 Phill. 438.

2. **Issues.**—“*unfairly*,” “*fraudulently*.”—An

issue, where a security had been "unfairly" obtained, superadded to an issue, whether it had been "fraudulently" obtained, disapproved; from the uncertainty of what, in a legal sense, constitutes unfairness as distinguished, if it be distinguishable, from fraud. *Parker v. Morrell*, 2 Phill. 453.

HUSBAND AND WIFE.

1. *Savings.—Separate property.*—By a marriage settlement, after reciting that the lady was entitled to real and personal property, and that it had been agreed that she should settle it, and also all other property to which she might become entitled during her coverture, upon the trusts thereafter mentioned: all her then property was vested in trustees upon trust, during her life, to pay and apply the income to such person or persons as she should appoint, and, in default of such appointment, to her for her separate use, and, after her death, to pay 500*l.* a year to her husband for his life; and the settlement declared that, subject to those trusts, all the trust property, and all the annual produce of it which might remain unapplied at her death, should remain upon the trusts thereafter mentioned; none of which were for the benefit of her husband. The trustees received the income of the settled property, and, with the lady's privity and acquiescence, paid it into a bank, in their own names, and made remittances to her from time to time as she required money. She and her husband separated soon after their marriage, and she died in his lifetime. At her death, 888*l.* were in her house, and a balance of 2,049*l.* arisen from the income of the settled property received by the trustees, was standing to their credit in the books of the bank. *Held*, that the husband was entitled to the 888*l.*; but that 2,049*l.* were subject to the ultimate trusts of the settlement, as being annual produce remaining unapplied at the wife's death. *Johnstone v. Lumb*, 15 Sim. 308.

2. *Ill-treatment.—Settlement of wife's fortune.*—A testator gave several annuities to four unmarried nieces, a married niece, and a nephew, with a proviso for cesser on alienation; the testator declaring his intention to be, that the annuities should be received as some provision towards the maintenance of the annuitants during their lives, and that the annuity of the married niece should be for her sole and separate use: *Held*, that the annuity of an unmarried niece was not limited so as to exclude the marital right of a husband with whom she subsequently married.

A husband, shortly after his marriage, ceased to cohabit with his wife, and never provided her with a home, or contributed towards her support, but left her to be supported by her sisters, whilst he received and appropriated to himself her income, and threatened her, by gestures as well as words, with personal violence. In a suit instituted by the wife against the husband and the trustees of an annuity of 50*l.*, (which appeared to be all her income,) the Court directed the annuity to be

paid to her for her support till further order. *Gilchrist v. Cator*, 1 De G. & S. 188.

INDEMNITY.

See *Trust*, 1, 3; *Title Deeds*.

INFANT.

1. *Contract with, when supposed to be of age.*—A man cannot be discharged in equity, after his majority, on a purchase or sale, or contract, made during his minority, on the mere ground, that without any false assertion by the infant, the other party believed he was not a minor, and dealt with him on the supposition that only adults could enter into such transactions. The Court, therefore, refused to entertain a bill for an injunction to restrain an action brought to recover certain railway shares which had been sold and assigned, by deed, to the plaintiff in equity by the plaintiff at law, during the infancy of the plaintiff at law, there being no evidence against the plaintiff at law of misrepresentation as to his infancy. *Stikeman v. Dawson*, 1 De G. & S. 90.

Cases cited in the judgment: *Rex v. Burdett*, 4 B. & Ald. 161, 162; *Briston v. Eastman*, 1 Esp. 172; *Peake, N. P. C.* 223; *Mills v. Graham*, 1 N. R. 140; *Johnson v. Pie*, 1 Lev. 169; 1 Sid. 258; 1 Keb. 905; *Jennings v. Rundall*, 8 T. R. 335; *Green v. Greenbank*, 2 Marsh. 485; *Scroggan v. Stewardson*, 3 Keb. 369; *Jackson v. Hobhouse*, 2 Mer. 483; *Clark v. Cobbe*, 2 Cox, 173; *Watts v. Creswell*, 9 Vin. Ab., tit. "Infant," N. pl. 24, p. 415; *Savage v. Foster*, 9 Mod. 38; *Hearle v. Greenbank*, 3 Atk. 695; *Esron v. Nicholas*, 2 Eq. Ca. Ab. 489; *Cory v. Gertaken*, 2 Mad. 40; *Overton v. Banister*, 3 Hare, 503; *Experte Watson*, 16 Ves. 265; *Belton v. Hodges*, 9 Bing. 365; *Goode v. Harrison*, 5 B. & Ald. 147.

2. *Misrepresentation.—Lease.*—The guardian of *A. B.*, (an infant) appointed by the Ecclesiastical Court, grants a lease of the infant's lands, receiving a premium, and at the time of granting the lease the infant is present, and represents to the lessee that the lessor is his guardian. The infant is also an attesting witness to the lease. He attains his majority, and then grants a lease of the same lands to another lessee. On a bill filed by the former lessee against *A. B.* and the new lessee, to have the first lease confirmed, or the premium refunded, with interest—a decree made according to the latter alternative of the prayer. *Esron v. Nicholas*, 1 De G. & S. 119; Reg. Lib. 1732, A. fol. 313.

INJUNCTION.

See *Partnership*, 2.

INTEREST.

Erroneous decree.—Where a decree or order under which money has been paid is reversed on appeal, the money is in general ordered to be repaid without interest. *Parker v. Morrell*, 2 Phill. 453.

See *Trust*, 7.

JOINT TENANCY.

See *Equitable Fee*.

JURISDICTION.

1. *Agency.—Specific chattels.*—The jurisdiction to protect by injunction the possession, and to decree the delivery up, of specific chattels, is not confined to chattels, the loss or injury of which would not be adequately compensated by damages; but extends to all cases in which the party in possession of the chattels has acquired such possession, through an alleged abuse of power on the part of one standing in a fiduciary relation to the plaintiff. *Wood v. Rowcliffe*, 2 Phill. 382.

2. *Award under order at nisi prius.*—Lord Chancellor.—*Semble*, where an action is referred by an order at *nisi prius*, this Court has no jurisdiction to interfere with the certificate of the referee or the judgment entered up pursuant thereto, on any ground on which it would not have such jurisdiction if the judgment had been obtained in the ordinary course upon the verdict of a jury. *Chuck v. Cremer*, 2 Phill. 477.

Cases cited in the judgment: *Nichols v. Chalie*, 14 Ves. 268; *Harrison v. Nettleship*, 2 M. & K. 523.

3. *Rolls' Court.*—The Vice-Chancellor, by permission of the Lord Chancellor, granted an injunction in a cause attached to Rolls' Court: *Held*, that the Master of the Rolls had no authority to dissolve it. *Puredes v. Lizardi*, 9 Beav. 490.

4. *Rolls' Court.*—The absence of a remedy for a supposed wrong in another place, is not of itself any reason for this Court assuming a jurisdiction on the subject. The case must be such as to bring it properly within the jurisdiction of this Court on other grounds. *Ryves v. Duke of Wellington*, 9 Beav. 579.

LESSEE AND TRUSTEE.

See *Trust*, 2.

LUNATIC.

See *Partnership*, 1.

MARSHALLING ASSETS.

Debtor and Creditor.—Administration.—Specialty creditors having exhausted their debtor's personal estate, a decree was made for marshalling his assets. A considerable time elapsed before the real estate could be made available for the purposes of the decree: *Held*, that the simple contract creditors were not entitled to have the interest which would have accrued on the specialty debts, if they had remained unsatisfied, as well as the amount of the personal estate, raised out of the real estates, and applied towards satisfaction of their debts. *Cradock v. Piper*, 15 Sim. 301.

See *Creditor*, 2.

MORTGAGEE.

See *Receiver*.

NEXT OF KIN.

Wife.—*Held*, upon the construction of a settlement containing an ultimate limitation to the next of kin or personal representatives of

A. in a due course of administration according to the Statute of Distributions, that the wife of *A.* who survived him was excluded. *Kilmer v. Leach*, 34 L. O. 380.

See *Settlement*.

PARTITION.

In a suit for partition, if a reference is necessary to ascertain the interests of the parties, the direction for the commissioner ought to be postponed until the hearing for fur. dirs. *Cole v. Sewell*, 15 Sim. 284.

PARTNERSHIP.

1. *Dissolution.—Lunatic.*—By articles of partnership between *A.* and *B.*, the partnership was to be dissolved on either party giving six months' notice. *A.* gave the required notice: *Held*, that it was effectual, notwithstanding *B.* was insane when it was given. *Robertson v. Lockie*, 15 Sim. 285.

2. *Injunction.*—A member of a partnership firm who had removed the partnership books, was at the suit of his co-partner restrained by the Court from keeping the books elsewhere than on the partnership premises. *Greatrex v. Greatrex*, 35 L. O. 238.

3. *Execution against share of one partner.*—Effect of equity of an execution against the share of one of two partners in the partnership stock. *Habershon v. Blurton*, 1 De G. & S. 121.

PIRATING NAME.

Public company.—Where one public company assumed a name in some respects similar to another public company, but it appeared that the former was not likely to suffer any injury from the resemblance; an injunction to restrain the latter from continuing their name and title refused, with liberty to plaintiffs to bring an action at law. *The London and Provincial Law Assurance Society v. The London and Provincial Joint-Stock Life Insurance Company*, 35 L. O. 96.

PURCHASER.

Title.—Decree.—The Court will not, upon motion, discharge a purchaser from his purchase, upon the ground of objections which affect the propriety of the decree for sale; though where the purchase-money was very small, it allowed the objections to the decree to be raised upon petition.

A purchaser is not entitled to be relieved from his purchase, upon the ground of the decree under which the sale is made being irregular. *Baker v. Sowter*, 34 L. O. 133.

RAILWAY POWERS.

It is on the ground of a general public good that the legislature grants to railway companies the compulsory powers of taking the property of individuals.

In questions between companies and individuals, whose property the former seek to take under compulsory clauses in their acts, the Court does not strain the construction of the act in favour of the former.

When the power of completing a railway according to the intention of the legislature depends on the voluntary consent of individuals having property in the proposed line, such consent ought to be obtained by the company before they proceed in the undertaking.

Whether, where it is evident that the line of a railway cannot be fully completed, the company have a right, compulsorily, to take any part of the property in the proposed line, *quære*. *Gray v. Liverpool and Bury Railway Company*, 9 Beav. 391.

REMAINDER-MAN.

See *Tenant for Life*.

RECEIVER.

Mortgage.—A receiver of mortgaged property appointed, pending the account under a decree of foreclosure, on the application of the personal representatives of the mortgagee, where the heir refused to take possession; the appointment being no more than what the heir might have done. *Thomas v. Davies*, 35 L. O. 259.

ROLLS' COURT.

See *Jurisdiction*, 3, 4.

SEPARATE PROPERTY.

See *Husband and Wife*.

SETTLEMENT.

Next of kin.—Trustees of a settlement were to stand possessed of the trust fund, (consisting of twelve-fifteenths of a larger fund,) in trust as to one share for the settlor's daughter *A.* for her life, and then for her children, who were to take vested interests, if sons, at 21, and, if daughters, at 21, or marriage; and if *A.* should have no children who should live to attain a vested interest in the fund, then to stand possessed of the share so given to *A.* and her children, in trust, as to one moiety, for the settlor's daughter *B.* and her children; and, as to the other moiety, for his daughter *C.* and her children, under the same limitations and restrictions to which the gift to *A.* and her children had been subjected. Then followed similar dispositions of the remainder of the trust fund in favour of *B.* and her children, and *C.* and her children, with limitations over of each share (in the event of either *B.* or *C.* dying without leaving children who should attain a vested interest) to the other two daughters and their children, in moieties as before. But in case there should not be any child or children of *A.*, *B.*, and *C.*, who should live to gain a vested and transmissible interest in the said twelve-fifteenth parts, or any part thereof, under and by virtue of the settlement, then the trustees were to pay, assign, and transfer the whole of the said twelve-fifteenth parts unto the next of kin of the settlor. The settlor died, having by his will made *A.*, *B.*, and *C.* his residuary legatees. After his death, *C.* died without issue. Then *B.* died without issue, leaving *A.* surviving her, who had two children, one of whom, a daughter, was married: *Held*, that

A. having a child who had lived to gain a vested and transmissible interest in the fund, was not entitled to any portion of it under the limitation to the "next of kin" of the settlor; consequently, that so much of the fund as did not pass under the limitations other than that to the next of kin, resulted to the settlor, and passed under his will to his residuary legatees. *Westwood v. Stater*, 1 De G. & S. 1.

SOLICITOR.

See *Trust*, 4.

SPECIFIC CHATTELS.

See *Jurisdiction*, 1.

TENANT FOR LIFE.

Remainder-man.—Tenant for life held, upon the terms of the will, entitled to the actual income made of the testator's property invested in mortgages and shares, from the time of the death until the conversion. *Sparling v. Parker*, 9 Beav. 524.

See *Title Deeds*; *Trust*, 5.

TENANT IN TAIL.

Arrangement between a father and son for barring entail.—Where the main consideration moving from the son was an undertaking to pay the father's debts, even the circumstance of several of the most important items being left in blank, was held insufficient to set the transaction aside, as against the father, though the son was only just of age; as a family arrangement of that description cannot be supposed to have depended upon any very exact calculation as to the amount of the debts. *Bellamy v. Sabine*, 2 Phill. 440.

TITLE DEEDS.

Tenant for life.—*Indemnity*.—Where an equitable tenant for life of real estates applied for the delivery to him of the title-deeds for certain purposes: *Held*, that, under the circumstances, they ought not to be parted with, unless an indemnity was given. *Davis v. Combermere*, 35 L. O. 192.

TITHES.

An act for making a railway enabled the company to pull down the houses of a parish in the City, and provided for the indemnity of the rector in respect of his rights to the tithes of 2s. 9d. in the pound on the removed buildings, by enacting that the company should pay the rector tithes in respect of the houses removed, according to the last assessment thereof to Lady-day preceding, equal to the loss sustained by the want of occupiers owing to such removal, until new houses or other buildings should be erected of such annual value, that the tithes payable thereon should be equal to the tithes payable on the buildings removed, such payments to diminish in proportion to the yearly sums actually payable for tithes on the new buildings. The company pulled down houses, on some of which the tithes of 2s. 9d. in the pound were paid on the full annual value,—or others of which the same had been paid by agreement between the rector and the

occupier, at less than the full annual value—and several on which the tithes had been wholly or partly remitted by the rector for the sake of harmony.

Held, that the rector was not, under the Railway Act, entitled to tithes from the company according to the value at which the property removed was assessed to the poor-rate.

That the rector was entitled to tithes from the company according to the annual value at which the property removed had been last fixed by agreement between the rector and the occupier.

That where no agreement was proved to have been made between the rector and occupier, the sum last collected as tithes should be taken as representing 2s. 9d. in the pound on the annual value of the buildings. *Letts v. London and Blackwall Railway Company*, 5 Hare, 605.

TRUST.

1. *Indemnity clause. — Contingency. — Inquiries.*—Trustees are liable for the loss of trust funds which never came into their possession, notwithstanding the existence in the settlement of a clause of indemnity, if it was possible for them to have got in the funds. That, under certain circumstances, the trusts might not have arisen, is no justification for not getting in the trust fund.

The Court will not direct inquiries as to whether the trust fund could be got in without a *prima facie* case to show that it could not. *Fenwick v. Greenwell*, 34 L. O. 545.

2. *Lessee and trustee.*—A testator gave power to his trustees to become lessees of the trust property. One of them availed himself of it, and the other trustee did not actively interfere in the management of the trust. The trustee-lessee was removed by the Master of the Rolls, at the instance of the *cestui que trust*, on the ground of the inconsistency of his duties of lessee and trustee, and upon appeal upon that and other grounds. *Passingham v. Sherborn*, 9 Beav. 424.

3. *Indemnity.*—A marriage being in contemplation, *A. B.*, the intended wife, conveyed property to trustees, for herself until marriage, and then for her separate use for life, without power of anticipation, and subject to certain interests to her husband and children, if any, for herself. Before the marriage took effect, the trustees committed a breach of trust, against which *A. B.*, by her solicitor, gave an indemnity. The marriage took effect two years after the settlement, and the husband died without children: *Held*, that the indemnity was valid and subsisting, and that the trustees had been released from their liability. *Ghost v. Waller*, *Upton v. Waller*, 9 Beav. 497.

4. *Solicitor.*—Where trustees for sale sell the trust property, and place the conveyance, executed by them and having their receipt endorsed, in the hands of a solicitor, who receives and misapplies the purchase-money, they are liable for a breach of trust. *Ghost v. Waller*, *Upton v. Waller*, 9 Beav. 497.

5. *Children.—Tenant for life.*—In a suit by children against trustees, to make them liable for a breach of trust, it was alleged by the trustees that their co-defendant, the tenant for life, had concurred. The decree was made against the trustees, without prejudice to any right or remedy they might have against the tenant for life. *Meyer v. Montriou*, 9 Beav. 521.

6. *Liability of estate of deceased trustee.*—A marriage settlement, made in 1811, recited that the husband was entitled to 20,000 rupees, secured by a note of the East India Company; and 10,000 rupees, part thereof, were thereby assigned (with certain property of the wife) to the trustees of the settlement, upon trust for the husband and wife for their lives, with remainder for the children of the marriage. One of the trustees died six weeks after the settlement was made. The husband died in 1819, and the wife in 1822. The trustees did not, nor did the survivor, take any step during the lifetime of the husband to recover the 10,000 rupees. After they had attained their ages of 21 years, the children filed a bill against the surviving trustee and the representatives of the deceased trustee, for an account of the trust funds, charging them with the 10,000 rupees. Under a reference to the Master, to inquire whether the defendant might, by due diligence, have received or got in the 10,000 sicca rupees, the defendant produced evidence showing it to have been the common belief of persons who knew the husband that he was not possessed of any such property, but no proof was given that the husband was insolvent; and the Court charged the surviving trustee with the fund, and interest from the death of the wife, and directed a reference to inquire the value of the 10,000 rupees at the time of the settlement.

The representative of the trustee, who died six weeks after the making of the settlement, was not a necessary party,—such trustee not having possessed any part of the trust funds, and not being chargeable with the default. *Simes v. Eyre*, 6 Hare, 137.

7. *Interest.*—A firm in India collected the estate of a deceased person, in that country, under a power of attorney from the administratrix in England, and remitted the amount to their agents, a firm in London, with an order to pay it the administratrix upon receiving a proper discharge. The London firm declined to pay over the fund to the administratrix, on the ground that the letters of administration, which she had obtained, did not bear a sufficient stamp. A suit was soon afterwards instituted by other persons, claiming to be next of kin of the intestate, for the administration of the estate, and to restrain the payment to the intestate. The London firm were defendants to the suit. No application was made to pay the money into Court for upwards of 10 years, and during the whole of this period it remained in the hands of the London firm, mixed with their own moneys: *Held*, that the London firm was not liable to pay interest on such moneys. *Wolfe v. Findlay*, 6 Hare, 66.

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—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

PROMISED REFORM OF THE ECCLESIASTICAL COURTS.

THE government stand pledged to introduce a bill next Session for reforming the Ecclesiastical Courts, the anomalous jurisdiction exercised by which has long been a scandal and reproach to our judicial system. The subject was brought under the consideration of the House of Commons, during the last week, by Mr. Bouverie, the member for Kilmarnock, who prefaced the resolutions we annex by a statement, represented to have been remarkable for its clearness and the power of condensation which it exhibited. The resolutions, which furnish a tolerably correct analysis of the substance of the honourable and learned member's speech, were in these words:—

“ That the Ecclesiastical Courts of England and Wales have been the subject of several public inquiries, which have shown them to be totally incapable of fulfilling the important functions they affect to exercise. That these Courts have not only to decide questions concerning some of the most important civil rights of the subject, but they exercise a criminal jurisdiction, pretended to be *pro salute animæ*, which touches his property and personal liberty. That the law they administer urgently requires amendment. That their system of procedure is incompatible with the effectual attainment of the ends of justice. That they are not only inefficient but costly. That their continued existence is injurious to the subject, and a scandal to the judicial system of the country.”

It was frankly stated by Mr. Bouverie, that his object was, “ to stir up and incite

the government to make a vigorous effort to grapple and deal with the subject.” Inquiry was exhausted. The evil was admitted. Referring to the various investigations which had taken place under the sanction of parliament, within the last 18 years, he stated that,—

“ Previous to 1832 a commission, composed of the most eminent persons in the church and in the profession of the law, including the late Archbishop of Canterbury, the present Bishop of London, the Bishop of Durham, the late Lord Tenterden, the late Lord Wynford, the late Sir N. Tindal, the late Sir J. Nicholl, and others, was appointed to inquire into the subject, and, after a lengthened investigation, they made a learned and able report, which he contended fully bore out the resolutions he was about to submit to the house. In 1833, the Real Property Commission, including Lord Campbell, Mr. Finney, Mr. Hodson, and Mr. Duval, investigated a large part of the subject relating to the testamentary jurisdiction of these Courts, and they made a unanimous report strongly condemnatory of the system which was still allowed to exist. A committee of that house, presided over by the president of the Board of Trade, also sat in the same year, and, having inquired fully into the subject, they laid a report upon the table strictly in harmony with the report of the Real Property Commission.”

After adverting in detail to the abortive attempts made by successive governments to legislate on the subject, Mr. Bouverie suggests the reasons which, as he conceives, caused the various schemes for alteration and reform to come to an untimely end.

“ He thought these measures, or some of them, might be supposed to have failed because

they did not go far enough; because they did not deal with the evil as one which it was necessary to eradicate; because they endeavoured to reconcile two interests which were wholly incompatible; because they attempted to nullify or conciliate the hostility of those interested in the maintenance of the existing abuses; because that hostility, though confined to a small number of persons, was combined and vigorous; and because the public, who were interested in the abolition of these abuses, did not come forward to support the government, and to insist on the adoption of the bills which had at various times been introduced."

Having briefly enumerated and described the Consistory or Diocesan Courts of the several Bishops, the Commissary's Court, the Provincial Court of the Archbishop, the Archdeacons' Courts, and the Courts called Peculiars, Mr. Bouverie thus describes the Bar of these Courts:—

"The bar of these Courts everywhere but in London was *nil*, with the exception, he believed, of York. Now, the bar here was a close monopoly. Nobody could practise in the Ecclesiastical Courts in London, unless he were a member of a close corporation in Doctors' Commons,—a corporation, the privileges of which were confined to those who had taken the degree of Doctor of Civil Law in one of our universities. The practice of these Courts, therefore, was confined, not merely to those who had had a university education, but necessarily, from the rules of the universities, to those who were members of the Church of England; and, as was always the case in such monopolies, the result was doubly injurious,—injurious to the profession itself in respect of its learning and its character, and injurious to the public who required its services."

After citing the testimony of Dr. Lushington, as to the injury the profession had undergone by being accessible to so few persons, and noticing that, as according to the rules of this branch of the profession, the judges likewise must have taken a university degree: men like Lord Campbell, the late Sir W. Grant, Sir E. Sugden, and the late Sir S. Romilly, could never either have sat upon the Bench or practised in these Courts, Mr. Bouverie proceeded to observe upon the fact that the judges of these Courts were appointed by the bishops, and it was entirely in the power of the bishops what should be the duration and amount of the authority delegated to them. There was no constitutional check upon them. By the Act of Settlement the judges of the Common Law Courts were removable by the Crown on an address from the two Houses of Parliament, and if one of those judges were to misconduct himself, or prove

grossly incompetent, Parliament would thus address the Crown, and he would be removed; but, however grossly a judge of an Ecclesiastical Court might misbehave himself, there was no such power of removing him from the Bench.

Referring to the history of the Ecclesiastical Courts, which he styled "the purest relics of papal authority existing in this country," the honourable gentleman proved that there had been a constant current of complaint against the abuses and maladministration of these Courts from the time of the Reformation up to the present day. In the present day, as in earlier periods, it might be truly said, "that the Courts were bad and inefficient, and that in them bad law was badly administered by incompetent judges." Glancing at their jurisdiction, he said,—

It appeared "that they had exclusive jurisdiction in all suits for separation from bed and board, or for nullity of marriage—questions involving the dearest social relations, the legitimacy of children, the peace and honour of families. In no set of cases could it be more important that the tribunal should have the respect and confidence of the public. Then, again, there was the testamentary jurisdiction of these Courts, and it was most anomalous and monstrous. They exercised the exclusive right of pronouncing on the validity of all wills of personal property; but they had no judicial power enabling them to determine the rights of the parties, nor could they administer the property under the will. Hence the litigants, after getting a decision there on the validity of the will, had to go into Chancery to have their rights under the will determined, and thus to pay another set of lawyers and another class of fees."

As bearing upon this branch of the subject, the honourable member read an extract from a petition, recently presented from Liverpool, signed by 130 solicitors, which stated,—

"That the civil jurisdiction of the Ecclesiastical Courts, especially in testamentary matters, proves almost daily a source of oppression and legal wrong to suitors. That your petitioners, in common with legal practitioners throughout the country, are often required to undertake all the labour and responsibility of civil suits, conducted in Ecclesiastical Courts, without being allowed to practise in such Courts, or to receive any emolument for their labour, except by making separate bills; which to the suitors is the occasion of further expense, of great delay, and of increased vexation, loss, and other serious damage, which it is not in the power of your petitioners to prevent falling upon their clients."

The absurdity and inconvenience arising from the fact, that whilst the Ecclesiastical Courts have a jurisdiction with regard to a will relating to personal property, they have no jurisdiction in respect to wills relating to real property, was forcibly illustrated by the case of an unfortunate individual named Clark, who was 21 years in the Queen's Prison, under the operation of this strange anomaly. That case was thus stated :—

“Mr. Clark took possession of a large amount of real and personal property to which he believed himself entitled under a will; the Ecclesiastical Court held the will invalid on the ground of insanity of the testator; the Court of Chancery held the instrument valid, and confirmed him in possession of the freehold estate, and yet was obliged, in execution of the judgment of the Ecclesiastical Court, to order Mr. Clark to repay the produce of the personal property, which had been spent, believing it his own. What could be more monstrous? Here was a man imprisoned for the greater part of his life on the score of the invalidity of an instrument, which the highest Court of Equity in the kingdom, that sent him to prison, actually decreed to be valid!”

After touching upon the jurisdiction exercised by the Ecclesiastical Courts on questions of Church-rate, and in cases of defamation, where the amount of costs inflicted upon persons in the humbler classes must have produced absolute ruin, the speaker referred to the case of *Geils v. Geils*, to which the attention of our readers has been frequently directed, as well as to the case of the Rev. Mr. Craig, in the Arches Court, to show the suspicions which prevailed as to the manner in which justice was administered in those Courts. There was a monopoly of the Bar, a monopoly in the practice of the proctors, and in both those branches of the profession were to be found intimate relations of the judge who presided.

“The judge in that Court (said Mr. Bouverie) exercised powers which no judge at common law possessed. He had no jury to assist him in the determination of matters of fact. The judge of a Common Law Court in trying an issue of fact was controlled and checked by the judgment of a jury of intelligent men. The judge in the Ecclesiastical Court had absolute power to determine matters of fact. That was not all; the judge in the Ecclesiastical Court had the most imperfect means of arriving at the truth. He could not hear the *vivâ voce* examination of witnesses. All the advantages of cross-examination, and of observing the demeanour and countenance of witnesses in giving evidence, were wanting in the Ecclesiastical Courts.”

The privilege claimed by the Ecclesiastical Court of registering wills of personal property was also adverted to, and evidence adduced to show that the registry was insufficient, imperfect, and objectionable. The amount extracted from the public in the shape of fees under this head, will probably strike some of our readers with astonishment.

“By a return made to the House four years ago, containing an account of the fees received by the several officers connected with the Ecclesiastical Courts in England and Wales, it appeared that the total amount of fees received annually was upwards of 106,000*l.*, and that the amount received by the deputy-registrars was upwards of 16,000*l.* These fees were one of the main abuses of the Ecclesiastical Courts; and the existence of them was really the substantial difficulty in the way of getting rid of those Courts. Many of the offices connected with these Courts were sinecures, and some of them were lucrative. In the Court of the Archbishop of Canterbury the principal registrar received 7,588*l.* a year; and there were clerks receiving salaries amounting to several thousands a year. In the diocese of Chester the registrar enjoyed a sinecure of 7,155*l.* a year. In the diocese of York the registrar received 2,636*l.* a year. Indeed, the names of those who held sinecure places in the Ecclesiastical Courts formed a sort of index of the families of the past and present bishops and archbishops of this country.”

The Secretary for the Home Department admitted that he could not contest the proofs, or controvert the statements made by Mr. Bouverie. He concurred with him as to the necessity of introducing some sweeping and extensive change in the constitution and practice of the Ecclesiastical Courts, and stated that he and the Attorney-General had entered fully into the subject, and that a bill would have been submitted to parliament during the present Session, if there had been any prospect that it would have received the attention which the principle and details of so important a measure required. Sir Robert Inglis anticipated that the measure promised by government would be open to the objection, that it would take justice from every man's door, and centralize it in London. The Attorney-General met this observation by warning the House, not to assume that the bill the government was prepared to introduce was based on the principle of centralization. The question involved matters of great complication and detail, but he believed if they were fairly and boldly grappled with, a measure might be introduced for the reformation of the Ecclesiastical Courts

which would be perfectly satisfactory to all parties. The honourable and learned gentleman stated in conclusion, that he was only prevented from laying the bill he had prepared on the table by the apprehension that it would provoke discussion, which would interfere with more urgent matters; but that it was intended to introduce it at an early period of the next Session. Upon this understanding the resolutions were withdrawn.

It is impossible, we think, not to feel the force of the conclusion come to by Sir George Grey, that with the opposition to be expected from local interests, whenever the measure is introduced, it would be utterly hopeless to attempt to carry it through parliament at this period of the Session. Strongly and universally as the existing system is condemned, its ramifications are too extensive, and its roots too deeply planted and too well nourished, to render it possible that the application of the axe should not be met by a stout resistance. We hope the Attorney-General does not deceive himself when he holds out the expectation that the measure he has framed may prove satisfactory to all parties. A satisfactory measure need not necessarily be founded on the principle of centralization, but no measure can be satisfactory to the public which does not involve extensive changes in the constitution and practice of the Ecclesiastical Courts, as well as certain amendments of the law as administered in these Courts. No alterations can be suggested of any real value, which do not get rid of "the hardship," forcibly pointed out by a writer in the *Morning Chronicle*, "of driving individuals for relief, in cases of the deepest interest and greatest importance, into Courts where they are unable to avail themselves of the tried services of a confidential family solicitor, or the talent which the command of the entire Bar would offer to their choice." Future opportunities will arise for discussing this subject. To enable the government to carry out the promised measure of reform, they must be cordially supported, encouraged, and stimulated by the expression of the popular will. The matter is wholly unconnected with party or politics. The grievance is understood and admitted, but as the immediate pressure is felt by individuals, and not simultaneously by large portions of the community, the public requires to be reminded how deeply its interest is concerned in the speedy abolition of this intolerable nuisance.

ADMINISTRATION OF CRIMINAL JUSTICE.

MR. BAINES, the member for Hull, whose practical knowledge and experience eminently qualifies him to deal with matters of this nature, has introduced a Bill "for the Removal of Defects in the Administration of Criminal Justice," the object of which appears to be, to relax the technical strictness of criminal proceedings, so as to ensure the conviction of the guilty, without depriving the accused of any defence founded in justice.

The alterations in criminal proceedings suggested by the bill are fourfold. They relate, 1st, to the punishment of accessories before the fact; 2ndly, to the trial of accessories after the fact; 3rdly, to indictments for stealing and receiving stolen property; and lastly, to the power of Courts of Oyer and Terminer to amend criminal indictments.

In cases of treason, and in all misdemeanours, an accessory before the fact is liable to be dealt with in all respects like the principal, but a different rule prevails in cases of felony. This anomaly is proposed to be got rid of by providing:—

"That from and after the passing of this act, if any person shall become an accessory before the fact of any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made, such person may be indicted, tried, convicted and punished in all respects as if he were a principal felon."

A failure of justice is frequently produced by the rule, that an accessory after the fact to felony can only be tried along with or after the principal felon. It is meant to enact:—

"That from and after the passing of this act, if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, he may be indicted and convicted, either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished; and the offence of such person, howsoever indicted, may be inquired of, tried, determined and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if

the act, by reason of which such person shall have become an accessory, had been committed at the same place as the principal felony: Provided always, That no person who shall be once duly tried for any such offence, whether as an accessory after the fact, or as for a substantive felony, shall be liable to be again convicted or tried for the same offence."

It is well known that, according to the existing practice, it is not permitted, in an indictment for stealing, to add a count for receiving the stolen property knowing it to be stolen, or in an indictment for receiving, to join a count for stealing. This difficulty is dealt with by enacting:—

"That from and after the *passing of this act*, in every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property, knowing it to have been stolen; and in any indictment for feloniously receiving property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property; and where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either for stealing the property, or of receiving it knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving it knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it knowing it to have been stolen."

It will be in the recollection of our readers, that public justice has, in many instances, been signally defeated on criminal trials, by reason of a variance between the proof and the indictment in some matter not material to the merits of the case. In cases of misdemeanour the Court has power to amend when the variance is between matter in writing or print produced in evidence, and the information or indictment, but in cases of felony the law gives no power of amendment. It is now proposed to provide:—

"That it shall be lawful for any Court of Oyer and Terminer and General Gaol Delivery, if such Court shall see fit so to do, to cause the indictment or information, when any variance shall appear between the proof and the recital or setting forth in the indictment or information of any matter in any particular or particulars in the judgment of such Court not material to the merits of the case, and by which the party accused cannot have been prejudiced in the conduct of his defence, to be forthwith

amended by some officer of the Court, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury or otherwise, as if no such variance had appeared."

The recital of the proposed amendments sufficiently indicates their value and importance. We hope the bill has not been introduced at so late a period of the Session as to prevent the subject from being fully discussed and considered.

COPYHOLD FINES UNDER BUILDING LEASES.

THE PRINCE OF WALES'S MANOR OF KENNINGTON, PARCEL OF THE DUCHY OF CORNWALL.

WE believe that it is the uniform practice of Lords of Manors, of which copyhold lands are holden, to accept fines on admission not exceeding two years' GROUND RENT, reserved on a building lease, which is, of course, the extent of the interest of the *copyholder* during the existence of the lease, the *improved* rent during the term granted being the exclusive *property* of the *builder* or *lessee*, and receivable by *him* in return for the outlay of capital in the erection of the houses on the land.

The council of his Royal Highness the Prince of Wales however, have thought fit to demand the payment of fines on admission, not only according to the *ground* rent, but on the FULL RACK rent of the houses, and in no inconsiderable number of instances fines on admission, after remonstrances and objections, have been paid, far exceeding the amount of the *ground* rents, to the manifest loss and injury of the *copyholder*.

The copyhold property, however, held of the manor being by such arbitrary conduct so much depreciated that it became altogether unsalable, and the admissions being few and far between, the council have taken the subject into their consideration, and issued the subjoined instructions to the steward:—

"*Kennington Copyholds.*"

"It having been represented to the council of his Royal Highness the Prince of Wales, that it is of material importance to the copyhold tenants of his Royal Highness, within the Manor of Kennington, that some fixed rule should be established and made known for assessing the lord's fine upon the admission of new tenants, in cases where the property has been improved

by the erection of substantial buildings under building leases: The council consider that the provision contained in the 35th section of the 7 & 8 Vict. c. 65, under which the amount of any fine becoming due within a fixed period, may be ascertained and settled by previous arrangement with the copyholder, is sufficient as regards future improvements. But in those cases in which the copyhold estates have been heretofore improved by the erection of substantial buildings under any building lease which may be in existence at the time of a fine becoming payable, the council direct, that the steward do ascertain whether the buildings are of a class which would warrant a building lease for a longer term of years than shall have elapsed since the improvements have taken place, and if such shall be the case, and the buildings are in a tenable state of repair, then that he be authorized to take such portion of the customary fine as would be the present value of such fine, (allowing interest at 4 per cent.), if payable at the expiration of such a term of years, to be computed from the date of the improvements, as would be a proper term of such building lease, provided that in cases where building leases are in existence, the annual sum upon which the fine is assessed, shall in no case be less than the amount of the ground rents (if any) reserved upon such building leases."

Thus it appears that the council, not satisfied with fines according to the ground rent, seek to obtain a *portion* of the improved rent, the property of the *builder*, out of the *pocket* of the *copyholder*. We venture most emphatically to declare that such an attempt is unworthy the advisers of the heir apparent of the Crown of these realms, and that it ought not to be persisted in. No private lord of a manor would venture to make such a demand, whatever the utmost stretch of his *legal* rights might *strictissimi juris* enable him to do.

To demonstrate the great injustice to the copyholder, we add the following illustration:—

A plot of ground is let for 70 years to build on, at an annual ground rent of 20*l.* Four houses are built of the aggregate annual value of 200*l.* The fine on admission, say two years' value, would on the *ground rent* amount to 40*l.*, whereas, on the *rack rent* it would amount to 400*l.*, thus actually depriving the copyholder for 20 years of his *entire* ground rent, and then probably before the expiration of that period he dies, and his heir will, on admission, have to pay *another fine* of 400*l.*, and be thus kept out of possession of his rights for 20 years *more*.

We understand, on information on which

we can implicitly rely, that during the reign of George the Third, as well during the minority of the then Prince of Wales as during the entire reigns of George the Fourth and William the Fourth, the uniform practice in the numerous estates holden of the manor was to take the *fin*es upon the *ground rents only*.

Surely the matter demands the serious attention of government and the legislature, and we are strongly inclined to think that a legislative enactment prohibiting lords of manors from taking fines beyond the ground rents would operate most beneficially to all the parties,—the numerous copyhold tenants of the manor being much alarmed at the probable confiscation of their property under pretence and colour of law. These are not times to draw the bow too tight, lest it break.

We anticipate a promulgation of further instructions to the steward, authorizing him to accept fines on the ground rent.

THE ANNUAL CERTIFICATE DUTY.

THE state of public business before the House of Commons has delayed the motion for leave to bring in the Bill to Repeal the Certificate Duty. Those who are best acquainted with parliamentary tactics know the numerous obstacles which generally stand in the way of the discussion of any important measure such as the present.

In order to avoid the delay which, amidst the various pressing matters before the House, seemed almost insurmountable for some time to come, we understand that Lord Robert Grosvenor, who has the charge of the proposed bill, deemed it expedient to ask the Chancellor of the Exchequer, on Monday last, the 5th inst.

Whether he would undertake before the next year, fully and fairly to consider the claims of the attorneys and solicitors of the kingdom, to be relieved from the Duty on their Certificates. If his right honourable friend would give him that assurance, he would not press his motion for leave to bring in a bill on the subject.

The Chancellor of the Exchequer said, that in the present state of the finances of the country, he could not spare the amount which this tax raised, viz., about 140,000*l.** He

* This amount is overstated, and probably includes the Duty on Articles of Clerkship, which it is not proposed to alter. The Certificate Duty does not exceed 90,000*l.*

would, however, consider the claims of the individuals alluded to, but at the same time he must guard himself against being supposed to make any distinct promise as to the course which might eventually be taken.

The government have received fair notice that if they do not grant the remission next year, the most strenuous measures will be taken to obtain it; and the important question now is, whether it will be expedient to leave the matter as it now stands, or to press it forward to a division of the House? There is much to be said on both sides, and we have no doubt that the reasons *pro* and *con* will be well considered by those to whose management the case is entrusted.

[See *Postscript* for subsequent information on this subject.]

INCORPORATED LAW SOCIETY.

MR. WARREN'S LECTURES.

MR. WARREN commenced his second lecture by cautioning his younger hearers against slipping into the notion that an attorney's articled "clerk" was not to all intents and purposes a *student*, as much as one preparing for the Bar. That acquiescing in the notion of his being a sort of drudge, or mechanical copying clerk, was calculated to familiarize him with a depressed standard of action, and inferior motives, and to prevent all chance of his being trained from an early period into familiarity with *responsibility*, and acquiring habits of *self-reliance*. He defined "Clerk," from Dr. Richardson's Dictionary, as signifying "one employed in *learning*, in learned occupations, or in doing that, performing those offices, which require some learning or scholarship;" and said that such was the true sense of the word when applied to youths articled to an attorney and solicitor. Their masters expressly covenanted to teach and instruct them in their profession; but what if they refused or neglected or were unable to learn?

Before a youth entered the profession, he and his friends should consider whether he was fit for it, and he should not enter in haste to repent at leisure. Mr. Warren proceeded to sketch two portraits of a youth calculated, and one *not* calculated, for the profession; and then to offer some highly important and practical suggestions concerning the preliminary education of those destined to become attorneys and so-

licitors, strenuously insisting on the necessity of their having a thoroughly sound, practical, liberal education; for they must prepare to encounter all comers—difficult questions arising in every kind of business and employment, and even the amusements of society. He dwelt much on scientific cases, such as in patents, copyrights, and engineering, and forcibly illustrated the absurdity of one attempting to deal with them, "to whom they came with the startling glare of utter novelty." He insisted on a thorough mastery of the English language, and on the acquisition of the Latin and French languages; and very earnestly dwelt on the necessity of being well grounded in cyphering and book-keeping, as perfectly indispensable to one whose business through life would principally arise out of disputed accounts. How could one not expert in these matters pretend to deal with the fabricated books of a swindler? He also advised early attention to acquiring the *elements* of mathematical knowledge.

Mr. Warren fixed 17 as the most suitable age for being articled,—and, having brought a youth to this point, proceeded to give a great number of practical suggestions concerning his conduct in the office, and the proper objects to be kept in view; one of which was, to banish from his vocabulary the word "drudgery," as the mere catch-word of "flighty fools." He insisted on the necessity of preserving courteous and gentlemanly manners and feelings, to qualify them for intercourse hereafter with the more polished members of society, as clients, and whom coarseness, rudeness, under-breeding, and flippancy, would disgust and alienate. He gave some salutary hints concerning their intercourse with the Judge at Chambers, and with the Bar;—emphatically enjoined a constant regard for truth and honour in all things—and gave some very solemn cautions concerning swearing affidavits, &c., in the hurry of business. He insisted on preserving rigorous silence out of doors on what came to his knowledge in the office; and on a constant cultivation of *economy*, both of time and money. "Never," said he, "allow yourself to do anything in a *hurry*—which he defined as 'the condition to which *haste* reduces an *inferior* man.'"

He concluded his lecture, which dwelt upon a great variety of interesting and important topics, evincing a perfect familiarity with his subject, by quoting the oath taken by an attorney to practise his profession "truly and honestly to the best of his knowledge and ability." "Under the pres-

sure of that oath," said he, "you will have to practise your profession for the rest of your lives: and what will be the proper word to designate the conduct of him who forgets that oath, or violates it?"

TRINITY TERM EXAMINATION.

THE Examination for the Term took place on Tuesday the 6th inst., at the Hall of the Incorporated Law Society, when 98 candidates attended,—several having been specially admitted under Judges' Orders. Sir F. Dwaris, one of the Masters of the Court of Queen's Bench, presided, and the other examiners were,—Mr. Ranken, the late President of the Society, Mr. Edward Leigh Pemberton, Mr. John Innes Pocock, and Mr. John J. J. Sudlow.

A preliminary Examination took place, as usual, into the Testimonials of the Candidates:—*character* being strictly investigated, as well as *ability*; but we hope, for

doubts which have been raised in some instances will be satisfactorily removed.

Our readers are aware of the newspaper paragraphs, which much exaggerate the number of candidates, many of whose names are reiterated Term after Term; but the average rarely exceeds 100. The love for the marvellous usually makes it double that number.

The printed instructions to the candidates in passing their Examination are placed before each of them on entering the Hall, and before commencing the business of the day, the Master who presides usually addresses a few admonitions to the candidates.

On the present occasion Sir F. Dwaris said, that when, upon former occasions, in the course of his official duties, he had been called upon to occupy that chair, he had felt it incumbent upon him to offer to the assembled candidates a few words of exhortation, advice, or encouragement. Upon the present occasion he scarcely felt called upon to adopt such a course, as he was aware that from Mr. Warren, a gentleman of distinguished ability at the Bar, only so late as the preceding evening, they were likely to have heard remarks upon their previous preparatory studies and the duties of the course upon which they were about to enter, which he was sure they must have listened to with both instruction and delight, and which might well render unnecessary any further treatment of such topics. Besides, at a moment of so much

anxiety and intense interest on their parts, he was unwilling to detain them by any lengthened remarks. All he wished to say should be compressed in one sentence and in two words: it should only be to admonish them in their future practice to cultivate integrity and industry. *Integrity*, because, even in a worldly sense, (though he trusted they all were, and would never be ashamed to own they were, influenced by higher motives); yet, because, even in a worldly sense, they might be assured that character was more profitable than cunning. *Industry*, because to obtain professional success they must use professional exertions;—because the only solid foundation of permanent success in the life of man was unwearied industry. "Proceed then," he said, "with the business of the day, each relying upon himself, not betraying the trust reposed in you, as gentlemen, so as to descend to take a copy from each other. Show us the progress you have made in your studies in the answers to our questions, where we do not look for a literal precision, but seek to find a proper spirit of inquiry. Convince us *you* have tried with diligence, and then rest satisfied that *we* will judge with candour."

The examiners continued their labours till past six o'clock, and met again the next morning. The result, we understand, has been that 89 were passed, and 9 postponed.

NOTES OF THE WEEK.

RECENT APPOINTMENT OF BENCHERS.

THE Benchers of the Inner Temple have recently exercised their power of election, by inviting to the Bench Table, two members of the Society of long standing, who have not the honour of being in the list of her Majesty's counsel. The gentlemen on whom this distinction has been conferred are, Vicessimus Knox, Esq., a member of the Home Circuit, who was called to the Bar so far back as the year 1804; and Francis Turner, Esq., an eminent Conveyancer, who was called to the Bar in the year 1810.

ANNUAL MEETING OF THE INCORPORATED LAW SOCIETY.

THE Annual General Meeting of the members of this society took place on Tuesday, the 30th May, when the Annual Report of the Council was read and approved and ordered to be printed. The Auditors' Account was also read and passed.

Mr. Austen, the late Vice-President, was elected President, and Mr. Clarke, Solicitor to the Ordnance, Vice-President. Nine members of the Council, who went out of office by rotation, were re-elected, and the vacancy occasioned by the death of the late Mr. Clayton was filled by the election of Mr. John Young.

Hitherto the Council have been chosen from the Town Members of the Society, but on this occasion a proposition was made to elect two Country Members; and in order to meet the objection, that they would be unable to attend the frequent meetings of the Council, two gentlemen were selected who had seats in parliament, and were consequently much in London. It may be proper to state, however, that the names were proposed without the knowledge of the honourable members, and too late for due consideration, and therefore the result cannot be deemed as showing any want of respect to the gentlemen who were not elected. The proposition is well worthy of consideration at a future time.

A resolution was also passed, authorizing the Council to complete the purchase of several houses adjoining the Society's Hall, amounting to 12,000*l.*

Important improvements are contemplated in the Library and Offices of the Society, which will probably be very soon commenced.

LAW LIFE INSURANCE SOCIETY.

The Annual General Meeting of this Society

was held on Friday, the 2nd June. The dividend to the proprietors was increased from 25*s.* to 36*s.* per share,—a goodly per centage on 10*l.*! The bonus to the assured, who are entitled to four-fifths of the profits, will also, we understand, be very considerable.

LAW FIRE INSURANCE SOCIETY.

The Second Annual Meeting of this Society was held on the 11th May. A very satisfactory report was made by the directors, and a dividend declared of 4 per cent., or 2*s.* per share. It appears that the premiums received amounted to 10,307*l.*, being upwards of 2,000% over the previous year. The proprietors are exhorted to use their best means for extending the business of the office. Of the 8,000,000*l.* and upwards, insured in the Society, seven-eighths are on private houses and other ordinary risks.

LAW APPOINTMENTS.

DOUGAL CHRISTIE, Esq., Barrister-at-Law, has been appointed her Majesty's agent and Consul-General in the Mosquito Territory.

John Fisher, jun., of Masham, in the county of York, has been appointed one of the Perpetual Commissioners for taking the acknowledgments of Deeds by Married Women, under the Fines' and Recoveries' Act, for the North and West Ridings of Yorkshire, and the Liberty of Ripon.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Dowding v. Bartlett. March, 8, 1848.

MISTAKE—NAME.

Evidence on which the Court corrected an error in the name of a party in an order for the payment of a sum of money out of Court without a reference to the Master, although the error extended to the previous pleadings.

In this case Mr. *Speed* moved to correct an order directing a sum of money to be paid out of Court, by substituting the name of *Tarbutt* for that of *Bartlett*, by which the order, following the pleadings, had designated the person to whom the money was to be paid. He stated that the mistake had arisen from Mrs. *Tarbutt*

being resident in America, where she had married, and not having put in any answer.

Lord *Langdale* at first expressed an opinion that it would be necessary to refer it to the Master to ascertain who was meant, but ultimately made the order, upon the affidavit of a person who stated that she had known Mrs. *Tebbutt* as *Ann Cunningham*, by which name the annuity, the arrears of which formed the subject of the order in question, was given to her.

To an inquiry by Mr. *Speed*, whether the name should be altered in all the previous proceedings, or only in the last order,

Lord *Langdale* replied, that the alteration should be confined to the last order.

McHardy v. Hitchcock. March 22 & 28, 1848.

WITNESSES OUT OF THE JURISDICTION.

On a motion for a commission to examine witnesses out of the jurisdiction, it is not necessary that the affidavit in support of the motion should specify the names of the witness or that it should be made by the solicitor of the party moving.

In this case Mr. *Ellice* moved for a commission to examine witnesses in Scotland. The motion was supported by an affidavit of the clerk of the solicitor, stating that the point upon which it was proposed to examine witnesses was material, and that the witnesses were chiefly Scotch.

Mr. *Campbell* objected that this affidavit was insufficient, both because it did not specify the names of the witnesses intended to be examined, and because the affidavit was made by the clerk of the solicitor only, and not by the solicitor himself.

Mr. *Ellice* contended, that whatever the old practice of the Court might have been, the affidavit was sufficient according to the present practice. Reference was made to Dan. Ch. Pr. II., 527; *Mendizabel v. Machado*, 2 Sim. & Stu. 483, 2 Russ. 540; *Oldham v. Carleton*, 4 Bro. C. C. 88; *Akers v. Chancey*, 2 Bro. C. C. 473; *Laragoity v. Attorney-General*, 2 Pri. 172; and *Bonham v. Leigh*, 5 Pri. 444.

Lord *Langdale*, after making inquiry into the present practice, expressed his opinion that the affidavit was sufficient in both the points to which objection was made.

Vice-Chancellor of England.

Carter v. Barnard. March 24, 1848.

COSTS OF THIRD COUNSEL.—HEARING OF CAUSE.

On taxation of costs as between party and party, the costs of a brief on the hearing for a junior counsel who drew the pleadings, but was subsequently called within the Bar, will be allowed, notwithstanding briefs on the hearing were also delivered to another Queen's counsel and a junior.

In this case the Taxing Master, in taxing the plaintiff's costs in the suit, disallowed the charges for preparing a brief for Mr. *Rolt* on the hearing, he having previously to being called within the Bar, prepared the bill. The Master did so on the ground that briefs had also been delivered to Mr. *Bethell* and a junior, and as he had allowed the expenses attending the delivery of those briefs, he had no jurisdiction to allow the expenses of Mr. *Rolt's* brief. The plaintiff now presented a petition praying that the Master might be directed to review his report, and allow the charges attendant on the third brief.

Mr. *Bethell* and Mr. *Heathfield*, for the petitioner, contended that it was absolutely necessary, under the circumstances, that a brief should be delivered to Mr. *Rolt*, it being im-

possible to have plaintiff's interest properly protected without it.

Mr. *J. Parker*, contra, cited *Wastell v. Leslie*, 14 Sim. 84; *Downing College case*, 3 Myl. & Cr. 474; *Smith v. Effingham*, Leg. O. vol. 34, p. 510; contending that the rule that the costs of two counsel only on the hearing should be allowed was never departed from, except under very special circumstances, and that there were no such special circumstances in the present case which authorised a departure from the rule.

The Vice-Chancellor said, he considered that the Master had done wrong in disallowing the charges. The general rule always was, that where a junior counsel who had drawn the pleadings became a Queen's Counsel, he should have a brief at the hearing; besides the case made upon the bill and answer was one of great nicety, and required a sound exercise of judgment, and therefore one particularly calling for the application of the rule. He thought the solicitor of the plaintiff had done right in delivering the brief, and he should therefore direct the Master to review his certificate.

Queen's Bench.

(Before the Four Judges.)

The Queen v. The Inhabitants of Colerne. Easter Term, 1848.

NOTICE OF CHARGEABILITY.—SIGNING BY A MAJORITY OF THE PARISH OFFICERS.

A notice of chargeability under the 4 & 5 W. 4, c. 76, s. 79, need not show on the face of it that the persons by whom it is signed are a majority of the parish officers. A notice signed by persons stated to be overseers of the removing parish, is prima facie good, and the party seeking to invalidate such notice must show that in fact the persons so signing the notice are not the majority of the officers of that parish.

ON appeal against an order of justices for the removal of a widow and her four children from the parish of Melksham to the parish of Colerne, both in the county of Wilts, the Quarter Sessions confirmed the order, subject to a case. The notice of chargeability was as follows:—

Parish of Melksham, in the County of Wilts. As to the removal of M. S. Davies and her four children. To the overseers of the poor of the parish of Colerne, in the county of Wilts. Take notice, that the above-named M. S. Davies and her four children, lately residing in the parish of Melksham, in the said county of Wilts, have become and are now actually chargeable, &c.

Signed,

Abraham Davies, } Overseers of the
George Pocock, } poor of the parish
George Watson. } of Melksham.

The appellants did not attempt to show that the notice was not in point of fact signed by the majority of the parish officers, but they re-

lied on the legal objection that the notice was bad in law upon the face thereof, inasmuch as it did not state affirmatively, or by necessary inference, that the notice either was, or purported to be, signed by a majority of the parish officers of Melksham. The Court of Quarter Session overruled the objection.

Mr. Hodges and Mr. Fitzgerald, in support of the order of sessions, contended that, according to the decisions in *Rex v. The Justices of Warwickshire*,^a and *Rex v. The Justices of Derbyshire*,^b such notice was sufficient, if signed by a majority of the parish officers. And in *Regina v. The Justices of the West Riding*,^c it was contended that a notice signed by persons stated to be a majority of the churchwardens and overseers was bad, because it did not appear that such majority was acting on the behalf or with the consent of the whole body, but the objection was overruled, and Williams, J., in giving judgment said, "That in order to make the notice insufficient it lay on the other side to show that the persons giving it were not really a majority competent to do so." The case of *Regina v. Westbury*^d may be relied upon on the other side, but in that case it appeared on the facts proved at the trial that the persons who signed the notice were not in fact the majority of the parish officers.

Mr. Slade, contra. The 4 & 5 W. 4, c. 76, s. 79, requires the notice of chargeability to be signed by the overseers or guardians of the parish obtaining the order; and in *Regina v. The Justices of Cambridgeshire*,^e the Court held that the requisite number of officers must actually sign such notice; and in *Regina v. Westbury*,^d Lord Denman, C. J., said, "It certainly is desirable that the notice should show that it proceeds from a majority." This notice is signed by three persons, alleged to be overseers of the poor of the parish of Melksham; they are not even said to be the overseers. In *Rex v. Austrey*,^f the question before the Court was, whether a parish certificate was properly executed, and Lord Ellenborough, C. J., in giving the judgment of the Court, says, "It is a general principle of law, wherever a power is given to any particular persons to do any written act in any particular manner, or under any particular circumstances, that their authority must appear on the instrument itself."

Lord Denman, C. J. It appears quite clear to me that this is a question of fact. We are bound to presume that those that may be the majority, and as such may give the proper notice, and who in this case have given the notice, are the majority of the parish officers; and that this notice of chargeability is good on the face of it.

Patteson, Wightman, and Erle, J.'s, concurred.

Order of Sessions confirmed.

^a 6 Adol. & Ellis, 873.

^b Id. 885.

^c 1 New Sess. Cas. 1.

^d 5 Q. B. R. 500.

^e 7 Adol. & Ellis, 480.

^f 6 M. & S. 319.

Queen's Bench Practice Court.

Tassie v. Kennedy. May 9 & 12, 1848.

LORD MAYOR'S COURT.—BAIL.

An action commenced in the Lord Mayor's Court was removed into the Queen's Bench by the defendant, when he paid money into Court in lieu of putting in bail for security for costs. Subsequently the plaintiff obtained a rule calling on the plaintiff (who lived out of the country) to give security for costs. He did not comply with the order, and took no further step in the cause for two years, during which time the money which the defendant had paid into Court remained locked up there. Under these circumstances, the Court made absolute a rule calling on the plaintiff to put in security for costs within a limited time, otherwise the defendant to be at liberty to have his money paid out of Court to him.

THIS was a rule obtained on behalf of the defendant, calling on the plaintiff to show cause why he should not, within four days, give security for costs in this action, or why, in default thereof, the defendant should not be at liberty to take out of Court the sum of 164*l.*, which had been paid in by the defendant in lieu of bail.

This was an action commenced by attachment in the Mayor's Court in London, more than two years since, when it was removed into this Court by *certiorari*, on the application of the defendant. By the practice, it is necessary, when a cause is moved into the Superior Court from the Lord Mayor's Court by the defendant, that he should put in bail as security for costs, but in this case the defendant, by leave of a judge, paid 164*l.* into Court in lieu of putting in bail. Subsequently to this the defendant obtained an order, staying all proceedings in the action until the plaintiff should give security for costs, on the ground that he (the plaintiff) resided abroad. The plaintiff, however, did not comply with this order, and no farther steps had been taken in the action until the present rule was obtained, against which

Bovill now showed cause. This rule must be discharged: the Court will never fix any time within which the security for costs shall be given by the plaintiff, *Broughton v. Jeremy*, 1 H. & W. 525, nor will they allow a term to be super-added to a rule for security for costs, that the defendant be at liberty to sign a judgment as in case of a nonsuit, if the security should not be given within a limited time, *Kelly v. Browne*, 5 Dowl. P. C. 264. See also 2 Chitty's Arch. 1236.

Meymott, contra. No doubt in ordinary cases the rule is as stated by the other side, but this is not an ordinary case, for here an order for security for costs was obtained two years ago, and the money that the defendant paid in in lieu of bail has been locked up ever since, and if the present rule be not granted, there it may remain for ever, as the defendant will have no means of forcing the plaintiff to proceed with the suit or to get his money out of Court.

Now it is clear that if, instead of paying money into Court in lieu of bail, the defendant had put in bail, the bail would have been discharged if the plaintiff did not declare within two terms, *Sykes v. Bauwens*, 2 Bos. & Pul. N. R. 404. Now, in this case the plaintiff has let two years go by; and why should the security on the money, be larger, or more extensive, than that the plaintiff would have been entitled to if bail had been put it?

Cur. ad. null.

May 12.—*Coleridge, J.* This was an action commenced two years ago in the Lord Mayor's Court, and removed subsequently into this Court by *certiorari*, and the defendant being held to bail, he paid into Court the sum of 164*l.* in lieu of bail; subsequently a rule had been obtained by him for security for costs, the plaintiff living out of the country, and in that stage the cause has remained ever since; the plaintiff not having complied with the order the proceedings are stayed, but still the defendant's money is locked up, and he seeks either to compel the plaintiff to comply with the order for security for costs, or to be allowed to have his money returned to him out of Court. Now there is no doubt that in the ordinary case, where a rule for security for costs is obtained, that the defendant cannot in any way compel the plaintiff to prove, but if he wants him to go on he must abandon his rule. But here there is the amount which the defendant has paid into Court in lieu of bail awaiting the cause, and I think it is very unfair to the defendant that his money should be thus locked up, and the plaintiff not be compelled to go on. I can find no authority which in any way interferes with my granting the rule which is requested by the defendant, and therefore I think it should be absolute.

Rule absolute, security to be put in within a fortnight, otherwise the defendant to be entitled to take his money out of Court.

Court of Common Pleas.

Goodlake v. King. Easter Term, 1848.

STATUTE OF LIMITATIONS.—ACKNOWLEDGMENT OF DEBT.

Where, in reply to the plaintiff's demand of payment of a debt, the defendant wrote, saying that his present position precluded his compliance with the plaintiff's reasonable demand, and that, if pressed by his creditors, he would be obliged to have recourse to the Insolvent Court, but that, if so, the plaintiff's claim should never be prejudiced thereby, every farthing of which he (the defendant) hoped at no distant time to be able to pay. Held, that such letter did not import a sufficient promise to take the debt out of the operation of the Statute of Limitations.

THIS was an action on a promissory note. Amongst other pleas, the defendant had pleaded the Statute of Limitations in bar of the action,

and at the trial the only evidence offered to take the cause out of the operation of that statute was the following letter, written by the defendant in reply to a demand of payment on the part of the plaintiff:—

“In reply to your note of the 6th instant, just received, it grieves me to say my present position quite precludes my compliance with your reasonable request. The fact is, my circumstances are so straitened that I must, if my creditors press me, have recourse to the Insolvent Court; that act, however, should never prejudice your claim, and I hope the time is not far distant when I shall be able to pay you every farthing, &c.”

Upon this the plaintiff had a verdict in his favour on the plea of the Statute of Limitations, leave being reserved to move to set that verdict aside, and enter a verdict for the defendant on that plea. Accordingly a rule *nisi* for that purpose was on a former day obtained, against which

Petersdorff now showed cause. It was admitted that the letter could not be considered as a sufficient acknowledgment to take the case out of the operation of the statute, unless the Court was satisfied that it contained a distinct and positive admission of the existence of the debt sued for, and that such admission was not subject to any condition which went to negative the implied promise to pay upon request, as alleged in the declaration. [*Wild, C. J.* For what amount is the letter an admission? You would recover the sum due not by force of the admission but by force of other evidence.] But that should make no difference, as there were authorities to show that evidence was admissible for the purpose of proving to what the written memorandum applied, and in the present case it was submitted the defendant's letter contained, in other respects, a sufficient promise to avoid the operation of the statute.

Parry, in support of the rule, was not heard.

Per curiam. The construction of the letter could not be put higher than this. If you press me, I must take the benefit of the Insolvent Act, and if so, you shall not be in a worse situation than you are now, and my intention at present is, that I will pay you when I can. If it imported anything, it was a prospective promise to pay some account due, as soon as the defendant was able, and was not, therefore, sufficient to take the case out of the operation of the statute.

Rule absolute.

Court of Exchequer.

Done v. Walley. April 19, 1845.

SURETY.—CO-SURETY.—EVIDENCE.

A surety in a bond may recover contribution from a co-surety, although at the time of becoming surety he takes a promissory note from the principal as a collateral security for the amount.

Evidence may, however, on the part of the defendant, be submitted to the jury, from

which the jury are to conclude whether, in taking such promissory note, the plaintiff received it as a collateral security only, or as a waiver of his right to contribution as against the defendant.

DEBT for money paid. Plea, except as to 25*l.*, never indebted, and part of that sum paid into Court. This was an action for contribution by one co-security against the other, and brought to recover the moiety of 250*l.*, the amount paid by the plaintiff upon the bond. The cause was tried before Mr. Justice Maule, at Chester. It was stated in the opening of the case, that the plaintiff refused to sign the bond as surety until she had returned to her a bill of exchange for 100*l.*, upon which she was liable as security for the same principal in respect of moneys due to another person, and had received from the principal, by way of security on the present debt, a promissory note for 250*l.* An objection was then taken by the defendant, that this action could not, under such circumstances, be maintained. This objection was overruled. Evidence was then given of the bond, the bankruptcy of the principal, and payment of the amount; whereupon a verdict was returned for the plaintiff for the full amount claimed.

Evans now moved for a rule to show cause why there should not be a new trial on the ground of misdirection. He contended that this action could not be maintained. The defendant was in no way a party to the transaction of the promissory note, and that it must

therefore be regarded as being a security to the plaintiff exclusively, and that the plaintiff, by receiving such security, had, to the amount of that security, exonerated the defendant. This was an equitable action arising entirely out of equitable matters, and when the surety has received a collateral security, the action could not be maintained: no case was to be found in the books in which such an action had been supported. The plaintiff might recover upon the promissory note, and if this action for contribution could be maintained, she might recover the money a second time: this could never be. *Turner v. Davis*, 2 Esp. 478, and other cases cited in note to *Lampleigh v. Brithwaite*, 1 Smith, L. C. 70; *Cowell v. Edwards*, 2 B. & P. 268. [*Rolfe*, B. You contend that in operation of law the facts exonerate the defendant.] No.

Pollock, C. B. In this case there must be no rule. The question really is, whether the promissory note was taken as a collateral security only, or whether it was an express contract, extinguishing the plaintiff's right to contribution. I am clearly of opinion the liability of the defendant was not extinguished by the plaintiff taking the promissory note.

Purke, B. The question is *quò animò*, the promissory note was given. If, as the defendant contends, it was given as a security to the plaintiff only, and not to the defendant, that is a fact which the defendant should have made out to the jury

Rolfe, B., and *Platt*, B., concurred.

Rule refused.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PLEADINGS.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.]

ABATEMENT.

Re-delivery of documents deposited in the Master's office ordered, on petition, in an abated suit.

In an abated suit, the Master has not jurisdiction, under the 60th Order of 1828, to direct the re-delivery of papers deposited in his office. *Alderman v. Bannister*, 9 Beav. 516.

AMENDMENT OF BILL.

Exceptions for impertinence. — Appeal. — Where an appeal from a decision of the Master on exception for impertinence in an answer was pending: *Held*, that in such a case a special

application ought to be made to the Court for liberty to amend, without prejudice to the appeal, and not a simple application to amend before the Master. *Boyd v. Boyd*, 35 L. O. 214.

ANSWER.

Impertinence.—An answer cannot be referred for impertinence after an objection for want of parties raised by it has been set down to be argued by plaintiff. *Lovell v. Andrew*, 34 L. O. 301.

APPEAL.

See *Amendment of Bill; Parties*, 7.

CREDITOR'S SUIT.

See *Parties*, 7.

DEMURRER.

1. *Co-defendant's interest.*—It is no ground of demurrer by one defendant that a co-defendant appears by the bill to have no interest. *Roberts v. Roberts*, 2 Phill. 534.

2. *Injunction.*—A plaintiff having a demand against the firm of Francisco Lizardi, & Co., filed a bill against Helena Lizardi, alleging that the firm was "represented by her." A demurrer was allowed.

A demurrer allowed to a bill filed by the

agent duly authorized, and minister plenipotentiary of a foreign state, in respect of rights of such state, on the ground that the state was not properly represented.

The allowance of a demurrer to the whole bill puts an end to an injunction, though liberty is given to amend. *Schneider v. Lizardi*, 9 Beav. 461.

3. *Relief inconsistent with former decree.*—In 1846, the plaintiff claiming an estate under a will of 1815, filed his bill to impeach a subsequent will of 1818, which displaced his title, but had ever since been acted on. It appeared on the face of the bill, that on the testator's death, his heir, who was the plaintiff's father, disputed the will of 1818; but he afterwards, in 1820, confirmed it, and purchased a part of the property from the trustees claiming under it. The heir afterwards sold the benefit of the contract to the plaintiff, who obtained possession before the completion of the contract; and the trustees having commenced an action of ejectment against him, the plaintiff filed his bill against the trustees, and the parties claiming beneficially under the will of 1818, contesting the will, and praying that its validity might be ascertained, and, if valid, then that the contract might be specifically performed. At the hearing, in 1833, so much of the bill was also dismissed as against all the parties except the trustees; and a specific performance was decreed. No objection being taken, the Master reported in favor of the title, and the report was confirmed: *Held*, that the decree in the first suit, being inconsistent with the relief prayed by the present bill, it ought not to have been filed without the leave of the Court; and a general demurrer was allowed. *Bainbrigge v. Baddeley*, 9 Beav. 538.

4. *Doubtful point left to the hearing.*—In 1805, *A. B.* purchased an estate with the money of *C. D.*, and executed a mortgage to secure the amount. *A. B.* was evicted, and he died in 1812, *C. D.* died in 1816. The same individuals represented both *A. B.* and *C. D.*, and in 1845 they established, under the covenant for title, a claim against the vendor's estate, for the amount of the purchase money. The residuary legatee of *C. D.* filed a bill in 1846, against the representatives, to recover the amount; the Court thought, that there was so much probability, at least, of their ultimately establishing their equity; that it overruled a demurrer to the bill, leaving the question to the hearing. *Norman v. Stiby*, 9 Beav. 560.

See *Bill of Review*, 4, 5.

DISCLAIMER.

In a suit by a second mortgagee to foreclose and redeem, certain defendants, including the provisional assignee of the insolvent mortgagor, disclaimed. They were, however, brought to a hearing, and it then appearing that there was insufficient to pay the first mortgage, the plaintiff declined taking the account. The bill was dismissed as against the disclaiming defendants, without costs, and the first mortgagee alone was held entitled to his costs. *Gibson v.*

Nicol; Gibson v. Alsager; Gibson v. Sturgis, 9 Beav. 403.

DISMISSAL OF BILL.

Answer.—16th, 66th and 68th Orders of May, 1845. — Where, through the negligence of plaintiff, certain defendants have not answered the bill, and one of the defendants is entitled to move to dismiss the bill for want of prosecution, a motion for that purpose by such defendant granted, and the bill ordered to stand dismissed, unless plaintiff filed his replication within a given time. *Baldwin v. Damer*, 34 L. O. 358.

HUSBAND AND WIFE.

See *Parties*, 4.

INJUNCTION.

See *Demurrer*, 2.

IMPERTINENCE.

See *Answer; Amendment of Bill*.

MISJOINDER.

Contingent interest.—*Widow.*—*Next of kin.*—The contingent interest of a testator's widow under an ultimate limitation of personalty, in the event of the death of all his children under 21, "to those who would then be entitled, under the Statute of Distribution," is sufficient to make her a proper party, as co-plaintiff with her children, in a suit for administration of the estate. *Roberts v. Roberts*, 2 Phill. 534.

MORTGAGOR.

See *Parties*, 5.

MULTIFARIOUSNESS.

1. Where a bill prays for a general account, as against two defendants, and it appears that one of them is connected with the plaintiff, merely as being the endorsee of a bill of exchange accepted by plaintiff. A demurrer for multifariousness allowed. *Knill v. Chadwick*, 34 L. O. 251.

2. If an entire case be made against one defendant, another defendant who is partially connected with the transactions of that case, cannot demur to the bill for multifariousness. *Knill v. Chadwick*, 34 L. O. 545.

PARTIES.

1. *Suits by some of a class on behalf of all.*—*Costs.*—*Witness.*—*Competency.*—Where a suit is instituted by some of a class of persons on behalf of all, those individuals of the class only who are actually named as parties to the record, are responsible to the defendants for costs. And, therefore, in a suit by some on behalf of all of the guardians of the poor of a parish against a party alleged to be a defaulter to the parish funds, *held*, that a person who had been a guardian at the commencement of the suit, and one of the committee of guardians who authorised it, but was not actually named as a party to the record, was a competent witness for the plaintiff, notwithstanding his liability as between himself and the other guardians, to contribute to the costs of the suit; such liability being one which could not be enforced in that suit, and his incompetency, by reason of interest as a rate-payer, being removed by the stat. 3 & 4 Vict. c. 26. *Scott v. Pascall*, and *Pascall v. Scott*, 2 Phill. 390.

2. *Appeal*.—Where an objection for want of parties is allowed at the hearing of the cause, the plaintiff does not, by taking the usual order that the cause should stand over with leave to amend, preclude himself from appealing from the decision on the objection. *Davis v. Chanter*, 2 Phill. 545.

3. *Personal representative*.—A fund was alleged to have been carried in an administration suit, "to a separate account intituled the general account." In another suit, to give effect to the assignment of a share of the fund, held, that the legal personal representative of the testator was a necessary party.

The ultimate limitation of a legacy was to a party's "personal representatives or next of kin." Held, that both classes must be made parties to a suit affecting the fund. *Salmon v. Anderson*, 9 Beav. 445.

4. *Husband and wife*.—Bill against a husband and his wife for the specific performance of an agreement made by the husband for the sale of an estate to the plaintiff. The bill alleged, as the grounds for making the wife a co-defendant, that she claimed an interest in the purchase-money, and had taken forcible possession of the title-deeds, and refused to part with them, unless her claim was satisfied.

The Court held, that she was improperly made a defendant, and allowed a demurrer by her, for want of equity. *Muston v. Bradshaw*, 15 Sim. 192.

5. *Mortgagor*.—*Mortgagee*.—*Redemption*.—In a suit to redeem against a devisee of the mortgage, an account of the rents received by the devisor may be obtained, without his being represented on the record. *Trulock v. Robey*, 15 Sim. 277.

6. *Trustee and cestui que trust*.—*Evidence as to parties constituting a class*.—To a suit by one or more cestuis que trust against trustees, alleging that the trust fund had been invested on improper security, and seeking to have it restored, all the cestuis que trust of the fund must be parties; and if the fund be held in trust for a class of persons, there must, before the cause is heard on the question between the plaintiffs and the trustees, be evidence that all the members of the class are before the Court. *Phillipson v. Gatty*, 6 Hare, 26.

7. *Admission of assets*.—*Payment of legacies*.—*Creditors' suit*.—The admission of an executor by his answer in a creditors' suit, that he had paid certain legacies bequeathed by the testator, is not an admission of assets, entitling the plaintiff to a decree against the executor for payment of his debt without taking the account, when the bill does not specifically charge the defendant with having made himself personally liable, but prays that an account may be taken, and the estate administered in a due course of administration.

Whether such admission of the payment of the legacies by the executor is a conclusive admission of assets in any case: *Quere?* *Savage v. Lane*, 6 Hare, 32.

Cases cited in the judgment: *Woodgate v. Field*,

2 Hare, 211; *Rogers v. Soutton*, 2 Keen, 598; *Collis v. Collis*, 2 Sim. 365.

8. When the testator, in his lifetime, conveyed to trustees the mines and minerals under certain lands, upon trust for himself (the testator) for life, and after his death upon trust for sale, and out of the proceeds,—1st, to pay all his debts, so as to discharge his real and personal estate therefrom; 2ndly, to apply 3,000*l.* to the purposes of his will; and lastly, to divide the surplus amongst certain persons therein named—the persons to whom the surplus is thus given are proper parties to a creditors' suit, seeking to follow the real as well as the personal estate of the testator; but the Court may, in its discretion, make a decree for administration in their absence. *Savage v. Lane*, 6 Beav. 32.

9. *Legacies charged on real estate*.—*Devisees in trust*.—In a suit since the 30th Order of August, 1841, to establish the claims of creditors of a testator against his real estate devised, legatees, whose legacies are charged on such real estate, are not necessary parties, where there are devisees in trust, having the powers specified in the Order. *Ward v. Bassett*, 5 Hare, 179.

Case cited in the judgment: *Miller v. Huddleston*, 13 Sim. 467.

10. *Bill for redemption*.—*Tenant for life who had demised interest for 200 years*.—A., having a life estate, with remainder over in strict settlement, subject to a mortgage of the settled property for a term of 1,000 years, demised the property for a term of 200 years, if he should so long live. A purchaser of the term of 200 years filed his bill to redeem the term for 1,000 years, who was the first mortgagor of the estate: Held, that A., the owner of the life estate, subject to the term of 200 years, was a necessary party. *Hunter v. Macklew*, 5 Hare, 238.

11. *Trustees of real estate for sale at a future time*.—*Cestui que trust*.—In a suit to execute the trusts of a will devising real estates to trustees for certain persons for life, and after their decease, for sale, with power to give discharges for the proceeds and the rents and profits, and with a direction to stand possessed of the monies to arise thereby, upon trust for the children of the tenants for life, the trustees and the tenants for life being defendants; but there being no power of sale until after the death of the tenants for life, the Court, notwithstanding the 30th Order of August, 1841, directed that the children of the tenants for life should be made parties. *Cox v. Barnard*, 5 Hare, 253.

12. *Illegal association*.—*Odd Fellows*.—A bill filed by certain members of a lodge forming part of an association called "The Independent Order of Odd Fellows," (which consists of many corresponding lodges and many thousand members,) against other members of the lodge, complaining of being excluded from the lodge, and praying for a declaration that such exclusion was illegal and void, and for an

injunction to restrain the defendants from applying a sum of 148*l.* 3*s.* 4*d.* otherwise than according to the rules of the lodge, and for an account, if necessary, of all the property and funds of the lodge, and a declaration of the rights and interests of the parties, and for all necessary directions for giving effect thereto, and for an injunction and receiver, and general relief: *Held*, on demurrer, not to be a case in which an injunction would be proper without other relief, or without view to other relief.

Held, also, that it does not belong to the functions of the Court to make a decree containing declarations of right alone, or, in such a case as the above, a declaration of right and an injunction.

Held, further, that the only relief sought, independently of this injunction, was such as the Court could not grant with the parties then before it; and that, as the defect could not be remedied without rendering this suit unmanageable, leave to amend ought not to be given.

Quere, whether the above association is legal, and whether a Court of Equity will recognise a contract of association, which, although morally laudable, is, from the number of persons concerned in it or otherwise, of such a nature as not to enable any of the established judicatures of the realm to deal with it beneficially, or whether such associations must not be left to regulate themselves by a moral rule, without judicial interference. *Clough v. Ratcliffe*, 1 De G. & S. 164.

Cases cited in the judgment: *Lloyd v. Loaring*, 6 Ves. 773; *Van Sandau v. Moore*, 1 Russ. 462, 470-2; *Beaumont v. Meredith*, 3 Ves. & B. 180.

13. *Injunction to restrain assent to bill in parliament refused on terms*.—Shareholders in an incorporated navigation company filed a bill to restrain the committee of management from entering into or carrying into effect an agreement with the trustees of a projected railway company for amalgamating the two undertakings. On the motion for the injunction, it appeared from the defendants' affidavits that the corporate seal of the navigation company had been affixed to the agreement with the railway trustees: *Held*, that the railway trustees were necessary parties to the suit; and the motion ordered to stand over, with leave to amend the bill by making them parties. On the motion being renewed, upon the amended record, the Court refused the injunction, the navigation company and the committee of management undertaking not to apply any further part of the funds of the navigation company in any manner not authorized by the Navigation Acts, unless under the authority of parliament, and all the defendants undertaking to consent to the plaintiffs being treated as persons entitled to oppose the railway bill in parliament. *Parker v. River Dunn Navigation Company*, 1 De G. & S. 192.

Quere, whether a cestui que trust can have an injunction to restrain his trustees from as-

senting to a bill in parliament. *Parker v. The Dunn Navigation Company*, 1 De G. & S. 192.

14. *Construction of 39th Order of August, 1841*.—On a cause coming on for argument under the 39th Order of August, 1841, the defendant is strictly confined to the objection which he has raised in his answer for want of parties. *Lovell v. Andrew*, 34 L. O. 79.

15. The assignee under the Insolvent Debtors' Act of the husband of a person who, as one of the next of kin, was entitled to a distributive share in the effects of an intestate, was held to be a necessary party in a suit for the administration of the intestate's estate. *Whatford v. Moore*, 35 L. O. 369.

PERSONAL REPRESENTATIVE.

See *Parties*, 3.

PLEA.

Immaterial issue.—Plea to a bill of revivor overruled on a point of form, as tendering an immaterial issue. *Andrews v. Lockwood*, 2 Phill. 398.

Case cited in the judgment: *Askew v. Townshend*, 2 Dick. 471.

REVIEW, BILL OF.

1. *Error apparent*.—A bill of review for error apparent on the decree, applies only to errors of form, and not to errors of judgment upon the merits. *Trulock v. Robey*, 2 Phill. 395.

2. After decree in a suit against the heir of A., the plaintiff petitioned for leave to file a bill of review, alleging error apparent on the face of the decree, and also that the plaintiff had discovered, since the decree, that the defendant was the executor of A., and that it was essential to the establishment of the plaintiff's rights to bring the defendant before the Court, in his executorial character.

Petition dismissed, because a bill of review for error apparent, may be filed without leave of the Court; and because the defendant had admitted in his answer, that A.'s will was in his possession. *Trulock v. Robey*, 15 Sim. 256.

3. In support of a bill of review for error in a decree, the pleadings in the cause cannot be referred to. Nothing can be looked at but the decree itself. *Trulock v. Robey*, 15 Sim. 277.

4. *Demurrer*.—In a bill of review the error in the decree must be apparent on the face of it, and it is not sufficient to support such a bill that under the prayer for general relief of the original bill, plaintiff might have obtained a fuller decree, it being admitted that he was not entitled to all the relief obtainable under such prayer. *Trulock v. Robey*, 34 L. O. 382.

5. A bill of review will not lie in respect of a decree which granted the whole of the prayer in the original bill, although it may appear from the pleadings in such bill, that the plaintiff is entitled to further relief than was specifically prayed for. The error assigned must be apparent on the face of the decree. *Trulock v. Robey*, 35 L. O. 114.

REVIVOR.

1. *For costs*.—The Lord Chancellor reversed

the order of the Vice-Chancellor, (15 Sim. 153), on the ground that the allegation as to the delivering up of the documents, ought not to have been inserted in the plea; but his lordship did not express any opinion upon the question, whether the rule that there shall be no revivor for costs, ought to be altered, in consequence of decrees of Courts of Equity having, (under 1 & 2 Vict. c. 110, s. 18,) the same effect as judgments at law. *Andrews v. Lockwood*, 15 Sim. 295.

2. *Insufficient probate stamp.—Negative plea.*—To a bill of revivor filed by the executrix of the original plaintiff, a plea of the statutes regulating the stamps on probates, and averring that the stamp on the probate was insufficient, overruled, the Court holding that the plea should have been simply “not executrix,” and that a plea in substance negative but in form affirmative is bad. *Roberts v. Madocks*, 35 L. O. 97.

SUPPLEMENTAL BILL.

1. *Insolvent.—Assignec.*—Where a supplemental bill had been filed against the general assignee of insolvent debtors, and a creditor's assignee was appointed only 10 days before the hearing of the original cause, and two years after the appointment of the general assignee, and both causes were set down for hearing: *Held*, that a supplemental bill against the creditor's assignee was necessary. *Parker v. Constable, Same v. Sturgis*, 35 L. O. 9.

2. A defendant to a bill in which a common decree to account has been made, may ask by way of supplement for a decree as for wilful default, arising out of matter discovered by him in the Master's office. *Benson v. Morris*, 35 L. O. 63.

WITNESS.

See Parties, 1.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER EASTER TERM, 1848.

Queen's Bench.

Middlesex.

| | | | |
|----------------------|------------------------------|--|---------------------------------|
| R. Sydney | Cahill | S. J. Macdonald (stayed) | Dt. Bolton |
| Johnson, Son, and W. | Rowe | Cope (stayed) | Prom. Chester |
| S. B. Hamer | Davies | S. J. Wilkinson (stayed) | Prom. Howard |
| M. Fraser | Williams | S. J. Whiteway (inj.) | Prom. Mardon and P. |
| Adlington and Co. | Bastone | Ross (inj.) | Dt. Chadwick |
| Elderton and H. | Fiddes | S. J. Wm. Toogood (inj.) | Prom. Campbell and A. |
| Johnson, Squ, and W. | Crowther, admix., &c. (inj.) | Edwards and another, surviving executors | Dt. Williamson |
| Becke | Becke | • Parish and another | Dt. Helme |
| Jno. Lewis | Moon (stayed) | Connop | Pro. Lewis |
| Thomas M. Parker | Clerk (inj.) | S. J. Hughes | Pro. Burrell |
| Ablett | Neal | Ward (inj.) | Pro. Carlton and H. |
| Oliverson and Co. | Doe d. Peacock | S. J. Frere | Eject. Vizard and Co. |
| Everest and Co. | Clutterbuck | Carter, (inj.) | Pro. Bell |
| Wontner | The Queen | Johnson and others | Indt. E. Lewis |
| Wm. Day | Dawson | S. J. Macken | Pro. Wright and Co. |
| Wood and B. | Doe dem. Rump and another | S. J. Cullum | Ejt. Jennings |
| Warneford | The Duke of Brunswick | S. J. Ghislin | Ca. H. Crocker |
| Currie | Pigott and others | S. J. King | F. Issue, Towsey |
| Same | Same | S. J. Clement and others | F. Issue, Espin |
| Hodgson and B. | Hulse and others | Esdaile and others | Cov. Venning |
| Warneford | The Duke of Brunswick | S. J. Baker | Ca. W. Berry |
| Tate | Brown | S. J. Andrew | Pro. Marten and Co. |
| J. Strutt | Parratt | S. J. Cusack | Pro. Birch and B. |
| Triston | The Queen | S. J. Hurdey | Perj. Watter and P. |
| Warneford | The D. of Brunswick | S. J. James | Ca. H. W. Vallance |
| Gregory, F. and Co. | Bennett | S. J. Gibson | Hicks |
| Ravenscroft | Leatham | Simmonds and another | Ca. Hoppe and B. |
| W. Lane | Lane | S. J. Hooper and another | Ca. Kilgour and P. |
| Miller | Payne | S. J. Earl of Chesterfield | Dt. Gregory and Co. |
| Hodgson and B. | Robertson and anor. | S. J. Lord Valentia | Pro. Rickards and W. |
| H. J. Levy | Soloman | S. J. Howard | Pro. S. Abrahams |
| Warneford | Duke of Brunswick | S. J. Pearson | Ca. Crocker |
| Vallance | Doe dem. Holmes and another | Price | Tres. and Eject. Davies and Son |
| Shearman and M. | Tilbury and others | S. J. Drummond | Dt. Aldridge |
| Brace and Co. | Knill | S. J. Richmond Railway Co. | Dt. Bircham |

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|-------------------------|-----------------------------------|-------------------------------|---|
| Dyde | Joel | Stewart | Pro. Manning |
| Richard Hare | The Queen | Bouchett | Indt. In person |
| Potter and Co. | James | S. J. Llewellyn | Dt. Tatham and Co. |
| Pros. in person | The Queen | S. J. Hart and two others | Indt. Walter |
| Riley in person | The Queen | S. J. Hart and others | Indt. C. Walter |
| Sargent | Hammick | Devonshire | Tres. Portal |
| Walker, G. and Co. | Doe dem. Conant and others | S. J. Davies | Ejt. Harting |
| Mortimer | Baylis | S. J. Bleaden | Dt. Hartings |
| J. W. Sloper | Sloper | S. J. Seyler | Pro. Bennett and P. |
| Bickley | Nenzies | S. J. Duke, knt. | Pro. Pontifex |
| Mawe | Drayson and another | S. J. Clarkson, sen. | Pro. Pontifex and M. |
| Turner and Son | Gardner | Dean | Ca. J. Duncan |
| J. H. F. Lewis | Bradshaw and another | Manning | Pro. In person |
| Hooper and Co. | Gibb and anor, adms., &c. | Johnson and another | Issue from Chancery, Jones |
| Fladgate | Collins and another | S. J. Kingsbury | Dt. Wathen |
| Willoughby and J. | Dance and another | Smith | Pro. Chidley |
| W. Keightley | Houghton (a pauper) | Stephen and another | Ca. Hartley |
| Weeks | James | S. J. Wilson (The Hon.) | Austen and H. |
| R. Raven | Doe d. Philpott and anor. | Hurst and others | Ejt. In person |
| M'Duff | George | Hughes | F. Issue Philp |
| Hill and H. | The Queen | S. J. Smith and others | Sci. fa. Oliverson and Co. |
| H. E. Brown | Frail | S. J. Dixon, Esq. | Fearon and Co. |
| Kirk | Daubney | S. J. Phipps, Esq. | Weller |
| J. Strut | Parratt | S. J. Elrington | Pro. Oldershaw |
| Solrs. Treasury | The Queen | S. J. Wm. Hunter | Indt. Bennett |
| Same | Same | S. J. Same | Indt. Same |
| Gridley | Bell and another | Midland Railway Co. | Co. Williamson |
| Hodgson and B. | Cochrane | Young | Ca. Coppock |
| Peddell | Luckin | Armstrong | Tres. Pike |
| Chas. Dod | Gardner | Shade and wife | Ca. Barnes and Co. |
| Crafter | Palmer and wife | Flint | Ca. Gray and B. |
| Mourilyan and R. | M'Guire | Storey and others | Pro. Milton and Co. |
| Pittman | Rowcliff and J. S. J. | Gregory | Tres. W. Williams |
| Hooker | Young and another | Barham | Pro. H. H. Green |
| Bebb | Ryan | Sams (sued, &c.) | Dt. Capron and Co. |
| Person | Coppock | S. J. Lander | Ca. Webb |
| Boulton | Shaw and others | S. J. Elderton | Dt. Person |
| Barrett and E. | Lenty | S. J. Sturgeon | Dt. Holmes |
| B. P. Smith | Browning and others | Sager | Dt. Wigglesworth |
| Ivimey | Dowling | S. J. Becke | Pro. Blake and Co. |
| Sidner | Black and wife | Southdon | Pro. Raven |
| D. Kean | Waddy | S. J. Smith | Dt. Person |
| Walker and Co. | Doe d. Conant & ors. | S. J. Warner | Ejt. Robinson |
| Abraham | Morris and others | Smith | Dt. Davies and Co. |
| Btekeley | Baldwin | S. J. Padwick & another | Ca. Espiu |
| H. Walker | Morrell and another | S. J. Woolten and another | Proms. Gauntlett |
| Begbie | Ellis and ux. (pauper) | Bercharett and ux. | Ca. Sydney |
| Birchum | Heath | Fitzgerald | Pro. Gadden |
| Jas. A. Silk | Silk | Stones | Pro. W. B. Davies |
| Few & Co. | Monsley | S. J. Stanley Br. | Dt. Cox and W. |
| Hodgson and B. | Prosser, jun. | S. J. Swinton | Pro. Peddell |
| Thomas | Yates | Cutts | Proms. Brooksbank |
| Hodgson and B. | Gregory and wife | S. J. Clark | Dt. Gray and B. |
| Cox and W. | Doe sev. dem. Richmond and others | Smith and another | Ejt. J. and C. Cole |
| Lewis and L. | Doe dem. Taylor | Patchling | Ejt. Horwood |
| Same | Clark | Christie | Ca. Clarke and Co. |
| James Taylor | Doe dem. Fuller and anr. | Sparke | T. and E. H. W. Cross |
| Hodgson and B. | Doe dem. Gregory & wife | Hatch and another | Ejt. { Beart for Hatch—H. T. Roberts for Green |
| Newman | Cumins and another | Stedman, jun. | Dt. Archbutt |
| In person | Freeman (pauper) | Rosher. | Dt. Gedge |
| John Rogerson | Banning, admor., &c. | Pickford | Dt. Everest and Co. |
| Young and Son | Doe d. Brown | Newport | Ejt. Wells |
| Bromley and A. | M'Dowall | Boyd | Dt. Hensman |
| Cree and Son | Carter | Unthank | Pro. Lever |
| E. J. H. and J. Lawford | The Queen | S. J. Kendall and four others | Ind. { Kendall, In person Binckes, G. Beckley Lunley, Lewis Bickley, In person Moore, Bower & Son |

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|-------------------|--------------------------|---|-------------------------------------|
| Kennedy | Martyr | S. J. Isaacson | Ca. Jones and Co. |
| Wray | Pitt | Chadwick | Ca. J. and C. Rogers |
| Murray | Dickinson | Benjamin | F. I. J. A. Jones |
| Lawford | The Queen | S. J. Kendall and others | Bower & Son, for deft. Moore |
| Medina | Finney | Byers | Treas. Baron, &c. |
| Upstone | The Queen | Gough and others | Indt. J. T. Church |
| G. S. Ford | Howard | S. J. Griffin | Issue, Horwood and G. |
| W. M. Webster | Hudqon | S. J. Twigg, (P. O.), &c. | Asst. Sharpe and Co. |
| Same | Hill and another | S. J. Same | Asst. Same |
| Thomas Walker | Gibson | Ablett | Dt. Roche and Co. |
| Same | Same | Same | Dt. Same |
| Pilleau | Nairne | S. J. Walker | Pro. Bolton and Co. |
| Pittman | Rubidge | Davies | Tres. Hall |
| Jos. Row | The Queen | Turner | Indt. Hinde and P. |
| J. Sewis | Solomon | Dunston and another, sued, &c. | Dt. J. Clayton |
| Kingston and S. | Carpenter | Bowen | Dt. Young and Son |
| Fesenmeyer | Chambers and another | Shée | Pro. Walter and P. |
| Govett | Abbott | Hamilton | Tres. Stevens and G. |
| Smedley and R. | Vaux and another | Mangles | Dt. Young and Co. |
| C. Pain | Turrill | S. J. Ditchburn | Pro. Ashurst and Son |
| Vyner | James | Mendes | Dt. F. Harrison |
| Hine and R. | Doe dem. Surmon | Castell | Ejt. Bickley |
| Webster | Laurie, knt., and others | Clements | Asst. S. Neal |
| Hawkins and Co. | Fenton and another | Rhodes and others | Pro. Norris and A., Cragg and J. |
| Amory and Co. | Taylor (P. O. &c.) | S. J. Pocock | Pro. Pocock and P. |
| Willoughby and J. | Lyll | Brown | Pro. Rosser and T. |
| Hayston | Dunston | Reston | Pro. Reynell |
| Everill | Graham, sued, &c. | Hanner | Asst. Church and L. |
| Rickards and W. | Beedell | Lilley | Dt. Clark and D. |
| Kingdem and S. | Carpenter | Willding | Dt. Clark and C. |
| Dyte | Cornbloom | The Honourable Brown- low Cecil, commonly called Lord Brownlow Cecil (sued, &c.) | Pro. Rickards and W. |
| Dyte | Marks | Brise, sued, &c. | Pro. Lethbridge and M. |
| Wyche | Flockton and others | Hall and others | Ca. Dodd and Co. |
| Mesterman | The Queen | Mary Dixon | Indt. H. T. Roberts |
| T. George | Bullock | Saul | Dt. Jutsum and G. |
| Rose | Smithe | Reynolds | Dt. Paterson |
| Trail | Doe dem. Darlington | Elph | Ejt. Donne and Co. |
| Brace and Co. | Anderdon | Pollard | Dt. Condell |
| Brandon | Dumeste (pauper) | S. J. Bishop and another | Pro. Chas. Berkeley |
| Hart | Esau | Harvey | Pro. Kearns |
| John Bell | Wilde | Smith | Pro. Hertslet and S. |
| Z. Brooke | Lowther | Stethert | Dt. Sewell and F. |
| Nixon | The Queen | W. A. Ghislin | Indt. Orchard |
| Same | Suggitt | Cole and another | Dt. Chilton and Co. |
| Same | G. Ghislin | Gregory and another | Tres. Hodgson and B. |
| Parker | Clerk | Mollady | Pro. Pittindreigh and S. |

Common Pleas.

Middlesex.

| | | | |
|-----------------------|--------------------------------|---------------------------------|--------------------------------|
| J. Duncan | Stead | S. J. Williams | Ca. Hodgson and B. |
| Clayton and Co. | Hargrave | S. J. Hargrave | Prom. W. & R. B. Baker |
| Melton | Fearn | S. J. Countess Waldegrave | Prom. Pearson |
| W. Smith | Colmer | S. J. Chappell, clk., &c. | Ca. Capron and Co. |
| T. Roberts | Nathan | S. J. Piggott | Prom. Rickards and W. |
| Lofty, Potter and Son | Anderson | S. J. Blackburn | Prom. Druce and Son |
| G. J. Shaw | Archer | S. J. Chapman | Ca. A. Dobie |
| Same | Same | S. J. Robertson | Ca. Same |
| Davies, Son and C. | Doe dem. Conant and another | S. J. Holmes | Eject. Vallance and B. |
| J. Strutt | Parrett | S. J. Lord Beresford and others | Prom. Walker, Grant and Co. |
| Elderton | Newton | S. J. Chaplin | Prom. Fry |
| Wm. Smith | Headen | Davey and another | Tres. Levy; Woolley |

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| Davies, Son, and C. Bayley and Janson J. Birt | Parker and another Cooper Arnett, clk., &c. | S. J. Parsey Delafield S. J. London and N. Western Railway Marquis of Chandos | Cov. A. Haynes Dt. Pike |
| W. Meyrick W. B. Davis Marten and Co. T. Roberts R. Swan Gilham Wright and Bonner E. Elkins Lindsey Rutter and Trotter J. H. Turner Rutter and Trotter Burgoynes and Co. M. Lewis Pain and H. Petherick Webber S. M. Cooper H. Knight J. H. Hembury Bodman Rosson J. D. Williams T. Roberts. | Waller Manwell, a pauper Stovel Sibley Nettleton Williamson, a pauper Smith Hedges and another Jackson, exor., &c. Stringer Morgan Pearson Browne Gannon Lomax, jun. Doe d. Milner Avis, admor., &c. H. Gompertz Ray West Snooke Parent Taylor Pook | S. J. Charrington and others S. J. Mathias S. J. Price Brook Robinson and another Pritchard Bentley Parkes Collinson Field Pearce S. J. Hunt S. J. Weiss Lomax, sen. Perraton S. J. Nugee Keily Macarthy Baxendale Michael O'Keefe Denman Tuthill | Dt. Parker and Co. Dt. Currie and Co. Prom. Fry and Co. Prom. G. Pope Prom. Freeman and Co. Ca. C. Lever Ca. Crafts Tres. Strangways Allgood W. F. Walker Prom. J. D. Williams Dt. F. V. Field Dt. J. Todd Prom. W. O. and W. Hunt Prom. Whitcombe Prom. White and Co. Eject. P. Richardson Ca. Gregory and Co. Dt. T. Asprey Dt. Games Tres. Tatham and Co. Prom. S. Yates Dt. Wickens Ca. J. Birt Prom. Kempsons |

Court of Exchequer.

Middlesex.

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|---|---|---|---|
| A'Beckett and Co. J. A. Jones Hughes Bodman A'Beckett and Co. Willoughby and J. Salomon Dupleix F. T. Southgate Horsley T. Lewis Same W. & G. T. Woodroffe Same Gem and Co. | Bidgood and others Locke and another Chambers and another Booth Rich Hawgood Golding (pauper) Grew Peters Summers Brown Edwards Man, sen. Man and others Stephens and another, ex- cutors, &c. | Smith and another Ashton Jennings Gibbins Phillips, Bart. Chaplin Macey Hill Stephens Barnsley Scace Same Grant Same Liley Secret S. J. Wilkin Menhem Ricketts Hay Scott Stiles Downe S. J. May Jackson and another Watson Deacon and others Storey and another Hiley Felton Johns Harley Salomon | Dt. Wehpert Dt. Silvester Covt. Grover Dt. Pryer Dt. Combe Case, Morphet Dt. Clarke Case, Ripplingham Dt. Bennett Dt. Miller and H. Case, Randall Case, Same Pro. Otway Pro. Same Dt. Futvoye and Co. Dt. Smith Case, In person Pro. Gregory and Co. Covt. T. M. Vickery Trov. E. Williamson Repln. E. Hodgkinson Repln. Same Dt. Palmer Dt. May |
| Same Nethersole W. B. Davies G. P. Wilton G. B. Lefroy H. G. Robinson Same Bowden and S. Selby and M. Hunt and Co. | Same Manning Stones Anderson Black Doe d. Wheeler Wheeler Elstow Palmer Wilts, Somerset and Wey- mouth Railway Co. Farrar, admix., &c. Williams S. R. Healey E. Healey Martin and others Swabey Cobb Shartt Turgand and another, as- signees, &c. Williams Stephens and others Harding | S. J. May Lawrence and another Hudson Wilks and another S. J. Brown | Dt. Singleton—Sowton Pro. Sowton Pro. Tillaard and Co. Pro. Robson Tres. Same Dt. C. Stanley Pro. Walsh Pro. H. Hammond Case, In person Pro. Dickson and O. Dt. Bridges and B. Pro. Lowless and Son Tres. M'Leod and S. |
| Sams Gregory and Co. J. Bowen May | | | |

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JUNE 17, 1848.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

MR. COMMISSIONER FANE'S LETTERS ON BANKRUPTCY REFORM.

THE London Committee for procuring an amendment of the Bankruptcy and Insolvency Laws have published a series of Letters addressed by Mr. Commissioner Fane to William Hawes, Esq., the Chairman of the Committee, on the subject of Bankruptcy Reform. In the amusing and discursive speech delivered by Lord Brougham in the House of Lords, some month or six weeks since, on law reform, it was remarked, that his lordship wholly omitted any allusion to the Bankrupt Laws, a branch of jurisprudence which for many years has been favoured with his especial attention. We know not whether his lordship conceives, that the alterations annually introduced under his auspices preclude the necessity for further amendment, or has at length acquiesced in what, we are rather disposed to think, is the prevailing opinion of the community, that any suggestions for useful reform must come from a different source. However this may be, impressed as we are with the urgent necessity of extensive changes in this branch of the law, we consider it matter for congratulation that the subject has been dropped by Lord Brougham, and taken up by others, who seem disposed to consider it in a different light, and with very different objects. It is unnecessary for us to say with the London Committee, that we do not pledge ourselves to all the opinions and views of Mr. Commissioner Fane. Indeed, from many of his

conclusions, as will be presently seen, we decidedly dissent, but his suggestions are bold, original, and comprehensive; he has been engaged for a period of nearly a quarter of a century in administering the Law of Debtor and Creditor, and we concur with the London Committee in thinking that the results of his experience and reflection are deserving of “the fullest and most careful consideration.”

In his first letter, Mr. Fane very successfully combats the notion that persons in judicial situations ought not to advocate changes of the law, and remarks that in a country where no minister of justice exists, suggestions for legal reform can come from no better source than the judicial body. The passage is worth extracting:—

“I am aware that an opinion very generally prevails in the profession, of which I am a member, that it does not become persons in a judicial situation to advocate reform, otherwise than by private communications addressed to the authorities. In this opinion, however, I do not concur. I regret, indeed, that it should exist, for I am sure it has done much to impede improvement. Law reform labours under great disadvantages. We have no public officer whose duty it is to consider it. In other countries there is a Minister of Justice. In this there is none. It is said, indeed, that the Lord Chancellor is Minister of Justice; but if he is, it is evident that he has not time to perform the functions of the office. His judicial and other duties are so overwhelming, that it is impossible he can undertake, in addition, so extensive a duty as that of originating reforms himself, or considering and maturing such as are suggested by others. Can

aid be expected from the Attorney and Solicitor-General? They also are fully occupied with other most important duties, and in matters of reform they can only act under the direction of the Lord Chancellor. Can we hope for assistance from private members of the legislature? I fear not. Advocates and solicitors in parliament are rarely very eager for reform, nor is it easy for them to procure a hearing. And, if an *unprofessional* member attempts to meddle with the subject, he is soon deterred by finding himself involved in technicalities which he cannot master. From whom then, it may be said, can aid be expected? I should answer unhesitatingly, FROM THE JUDICIAL BODY. From them, indeed, assistance of the most valuable kind might be obtained. They understand the subject. They cannot but regret the evils they daily witness, and they *must* wish to remedy them.*

The Commissioner's condemnation of the existing system, and his opinion of the effect of recent alterations, is, if possible, more decided and unqualified than any expressed in these pages. He says, "the Law of Debtor and Creditor has from time immemorial been the subject of universal complaint, and I believe that at this moment it is the general opinion of the commercial classes, as it certainly is mine, that, except perhaps as regards debts under 20*l.*, that law is in a worse state than it ever was." Now we have never scrupled to affirm that the law is bad and badly administered, but we do not believe the glaring frauds and corrupt abuses indignantly denounced by Lord Eldon, in the passage from Vesey, which Mr. Commissioner Fane has selected as the text^a for his observa-

* "The Lord Chancellor took the first occasion of expressing strong indignation at the frauds committed under cover of the Bankrupt Laws, and his determination to repress such practices. Upon this subject his Lordship observed with warmth, that the abuse of the Bankrupt Law is a disgrace to the country, and it would be better at once to repeal all the statutes, than to suffer them to be applied to such purposes. There is no mercy to the estate. Nothing is less thought of than the object of the commission. As they are frequently conducted in the country, they are little more than stock in trade for the commissioners, the assignees, and the solicitor. Instead of solicitors attending to their duty as ministers of the Court, for they are so, Commissions of Bankruptcy are treated as matter of traffic—A. taking out the commission, B. and C. to be his commissioners. They are considered as stock in trade; and calculations are made, how many commissions can be brought into the partnership. Unless the Court holds a strong hand over bankruptcy, particularly as administered in the

tions, now exist. In this respect, at all events, the system has been improved. The statute 6 *Geo.* 4, c. 16, also effected many desirable alterations, in addition to consolidating the law, but these amendments have been marred and rendered ineffectual by the ill-considered changes subsequently introduced in rapid succession.

Mr. Fane's first onslaught is on the system of pleading established in the Courts of Common Law in actions of debt. His views on this subject appear to us to rest upon what he must permit us to describe as a very transparent fallacy. Let him speak for himself:—

"The Common Law Courts have never permitted the debtor, when sued, to plead what in the vast majority of cases is his *real* defence, namely, that he is *unable to meet his engagements*. It is notorious, that in 19 cases out of 20, I might say 49 out of 50, the defendant has no other defence to offer. There is nothing really in dispute. He knows that he owes the money, but he is insolvent, either in the sense of not being able to pay the debt *at once*, his means of payment being property, which he cannot immediately turn into money, or in the sense of being unable to pay more than a certain number of shillings in the pound to all his creditors. In the one case his ground of resistance is, I cannot pay *now*; in the other I cannot pay *in full at any time*. Now, that being the real truth in the vast majority of cases, one would have expected, that, if the Common Law really were, what some of its idolatrous worshippers would have us believe it to be, the perfection of common sense, it would enable such debtor to do what, as an honest man ought to do, *state the truth*. But no, the law does not permit him to do so, and never has permitted him in any period of its history. It compels him either to admit that he owes the money, or to deny it."

The last proposition is hardly correct. When a creditor complains in the language of pleading, that the defendant has broken his engagement, the law does not oblige the latter either to admit or deny the obligation. If he cannot deny it, he is not called upon to plead at all, and the law assumes, as it is not denied, that the defendant admits he has entered into the contract stated and failed to perform it as alleged. The law does not indeed assume that men incur pecuniary obligations they are unable to fulfil, but it tests the capacity of the debtor to fulfil admitted obligations, and when he is

country, it is itself accessory to as great a nuisance as any known in the land; and known to pass under the forms of law." 6 *Ves. Reports*, 1.—*Easter Term*, 1801.

satisfied that he is unable to meet his engagements, humanely points out a means by which he may be relieved from the consequences of his default, with as little injury to himself as is consistent with the security of his creditors. This, we contend, is the principle of the law, the practice, we admit, is not always in accordance with it. Let us see how it would be improved if the system which Mr. Fane suggests were substituted :—

“The remedy,” he says, “is to allow the debtor to tell the truth in his pleadings, to allow him to plead insolvency. Indeed, the law ought to go further, it ought, not merely to allow him, it ought to require him, at his peril, to do so, and to punish him for not doing so.

“But perhaps it will be said, and what is the plaintiff to do? Is he to be baffled by such a statement, a statement which may be utterly false? Here again the answer is plain. The insolvent ought to support his plea, by saying that he had filed, or was preparing with all possible speed to file, on oath, in the proper Court of Bankruptcy, a full and particular statement of his debts and assets. His plea ought also to be an act of bankruptcy, and should entitle the creditor, if not satisfied with the statement when filed, or if he did not choose to wait for the statement, to drop his proceedings at law and proceed in bankruptcy. The debtor's statement might show not insolvency, as it is generally understood, that is, inability to pay in full at any time, but grounds for postponing payment, or it might show inability to pay at any time. Whichever was the case, the creditor would have a fair opportunity of forming a judgment, founded upon a document, on oath, recorded in a Court of Justice, what course he ought to pursue. If the debtor asked postponement, the creditor, having such ample means of satisfying himself that all was right, might be content to grant it. If the debtor offered a certain number of shillings in the pound, again the creditor might be willing to accept the offer. In either case the litigation would end. If the debtor were sued by another creditor, his course would be to repeat his plea, and refer to the statement already filed, and then that creditor would exercise his own discretion, as to what course he should pursue. If the second creditor was dissatisfied, or chose to have a regular investigation in the Court of Bankruptcy, he might proceed in that Court.”

We confess ourselves unable to comprehend any great practical improvement in the system thus suggested. The debtor, satisfied of his own insolvency, does not now plead it, but he becomes bankrupt or insolvent, as the case may be, and if after notice of such bankruptcy or insolvency, or of its contemplation, the creditor chooses to proceed, he does so at his own peril, and derives no benefit from his proceeding.

Mr. Fane complains that the honest debtor is not only denied the right of pleading the truth, but that the dishonest debtor is tempted to plead a falsehood, and this result he ascribes to the operation of two legal rules, both of which he considers founded in error :—the first, that an admission by a defendant against his interest is evidence for the plaintiff; the second, that the creditor who first gets judgment and issues execution against a debtor's property is entitled to priority of payment. The mode in which these rules are supposed to operate in defeating justice and promoting knavery, is so humorously described, that we are induced to print it, to the exclusion of graver matter. According to the learned Commissioner, the ordinary mode of proceeding is as follows :—

“As soon as a *bonâ fide* creditor commences an action against a fraudulent debtor, the debtor looks out for a knave to help him. That he will soon find one, no one can doubt. ‘Birds of a feather,’ it is said, ‘flock together;’ and certainly there are few public-houses frequented by fraudulent traders in which what political economists call a ‘skilled labourer’ in the art of cheating creditors is not to be found. The ‘skilled labourer’ is desired to bring an action against the knavish debtor for such sum as will suffice to cover the value of the property it is wished to protect. To enable him to do so with plausibility, and to provide against accidents, an old stamp is procured, upon which a bill of exchange is written, and this bill is accepted by the supposed debtor, and handed to the supposed creditor. The action is then commenced. The defendant admits the demand. This admission, being presumably against interest, suffices to establish the plaintiff's case. Judgment is entered up. Execution issues. The sheriff seizes. The goods are valued by a sworn broker, and the sheriff passes them, by bill of sale, to the supposed creditor. The business is concluded, and the debtor is now ready to receive his real antagonist. Meanwhile the proceedings of the *bonâ fide* creditor present a melancholy contrast to those of his competitor in the race for justice. Whilst the one has been speeding through the mazes of the law with the rapidity of a railway express, the other has moved, to use a phrase of Sir Walter Scott's, ‘like a fly through a glue-pot.’ However, as there is no real defence, the *bonâ fide* creditor at last gets judgment, and he too, having called in the sheriff, proceeds to seize; and then, after having paid all the enormous expenses incident to the administration of justice, where justice is opposed, the fees of those who have the issue of writs, the fees of his own attorney, pleader, and counsel, of the officers of the Court, of the jury, of the sheriff and his officers, he discovers that, after all this outgoing, there is no

incoming, for there is nothing to seize. It is true that he may now commence a new proceeding to try the honesty of the previous seizure; but with what hope of success? In his former suit, he had to establish an affirmative, namely, that his debtor owed him so much, the evidence of which would naturally be within his own power, the question depending on his own contract; on the second occasion, he would have to establish, not an affirmative, but a negative, namely, that his debtor did not owe a third person anything; and this he would have to do, without any evidence of his own, the question depending not on any contract of his, and with the evidence of the pretended debtor directly against him, and in the face of that rule of law which says, that the debtor's admission of a debt is evidence for the alleged creditor. Of course, even against such odds, he may succeed, but if he does, it can only be because his new antagonist is a knave, and a man of straw; and of what value is success against such an antagonist? The judges may give judgment; but can the sheriff give the fruits of it?"

The remedy for this evil proposed by Commissioner Fane is certainly, as he admits, "somewhat startling to legal prejudices." He suggests that effect should be given to the rule "equality is equity," by enacting, "that no creditor of a trader shall be allowed to take such trader's goods in execution at common law, but that he shall be confined to such remedies against property as the Bankrupt Laws may give him." In other words, he desires to see the doors of the Common Law Courts shut against the creditors of traders, and the exclusive management of the affairs of this important and numerous section of the community given to the Bankruptcy Commissioners and their Official Assignees! Here is reform with a vengeance! There are few amongst the debtor or creditor class, we fancy, who would not think the remedy worse than the disease. It is enough, perhaps, to say that the suggestion is utterly impracticable. It would seem to be founded on the presumption that the whole number, or at all events, a large majority of persons in trade, against whom process is issued by the Courts of Law, are in insolvent circumstances, and fit subjects for the Court of Bankruptcy. A calculation of the numbers sued as compared with those who become bankrupt, would prove how incorrect the assumption is in point of fact, and we should hardly expect to find even a Commissioner of 25 years standing, so enamoured with the Court of Bankruptcy as to suggest that the affairs of traders who are not insolvent should be administered in that Court.

Mr. Fane's opinion as to the general usefulness and irresponsibility of the persons charged with the execution of process, and his denunciation of the fee system, are not so much at variance with our own views, and we shall take an early opportunity of calling attention to them.

NEW BILLS IN PARLIAMENT.

COPYHOLD ENFRANCHISEMENT EXTENSION.

THE Lord Chancellor's Bill has just been brought in for extending the powers given by the Acts for the Commutation of Manorial Rights, for facilitating the Enfranchisement of Lands, and the Improvement of Copyhold and Customary Tenure. It may for the present be observed, as a matter of importance to the profession, that the Commissioners are to be authorized, with the assistance of the Taxing Masters of the Court of Chancery to fix a scale of Stewards' Fees; and the Stewards' Fees are to be taxable under the provisions of the Attorneys' and Solicitors' Act, 6 & 7 Vict. c. 73.

HIGHWAY LAWS AMENDMENT.

Sir George Grey has introduced a Bill to amend the Laws relating to Highways, for the purpose of a "more efficient, uniform, and economical management," and in order that "places now separately maintaining Highways, may be combined into Districts, and placed under the management of District Boards."

A Board of Way-Wardens is to be elected by the rate-payers and owners of property, (s. 13); and the Board is authorised to appoint officers for the execution of the act, viz., surveyors, clerks, and treasurers, (s. 23). The Clerk of the Board is to attend all meetings thereof, and give such notices and perform such other duties as the Board may require, (s. 26). The clerk and treasurer not to be the same person, nor can the partner of either be appointed.

NOTICES OF NEW BOOKS.

A Compendium of Mercantile Law. By JOHN WILLIAM SMITH, of the Inner Temple, Barrister-at-Law. Fourth Edition, by GEORGE MORLEY DOWDEWELL, Esq., of the Inner Temple, Barrister-at-Law. London: Benning & Co. 1848.

IN one of Mr. Warren's recent lectures at the Law Institution, while recommending

this new edition of one of the late Mr. Smith's great and elaborate works, he stated that he had seen lying on Mr. Smith's table, only a day or two before his death, his interleaved copy of the third edition, with copious notes, contributing, in his own hand-writing, to an edition which he did not live to edit, and which it has fallen to the lot of Mr. Dowdeswell to prepare for publication. This fact is confirmed by that gentleman's preliminary notice to the present edition, and undoubtedly adds greatly to its value. The alterations and additions rendered necessary by the changes which have been effected since Mr. Smith's death in December, 1845, appear to us to be characterised by care and judgment, and no more than a just deference to the text, with its distinguished author's manuscript additions, as above suggested.

This work has been too well and too long known and established, both in this country and America, to admit of our entering into any explanation of its merits, which have been repeatedly recognised by the most competent judges in this country, and by the late eminent American jurists, Chancellor Kent, and Mr. Justice Story. After mentioning facts like these, any commendation of ours would appear superfluous; but we may express our opinion that Mr. Dowdeswell has performed his duties, as far as we have been able to ascertain the fact, in a very satisfactory manner. The work is undoubtedly much increased in bulk—but inevitably so, regard being had to the incessant activity of Parliament in commercial legislation, since the death of Mr. Smith. If the present work were not in existence, we could point to no other that would for an instant be thought a substitute for it; which, considering the vast importance of the subject, is sufficiently singular, and confers great value upon this masterly performance, which has so satisfactorily supplied so signal a desideratum.

DISPUTED DECISION. — LAW OF LARCENY.

A SERVANT TAKING HIS MASTER'S OATS CONTRARY TO ORDERS TO FEED HIS MASTER'S HORSES.

The Queen v. William Privett and Charles Goodhall.

(Denison's Crown Cases reserved. Pt. 2, p. 193.)

THE prisoners were tried before Mr. Justice Erle, at the Spring Assizes for the county of Hants. It was proved that the prisoners took from the floor of a barn, in the presence of the

thresher, five sacks of unwinnowed oats, and secreted them in a loft there, for the purpose of giving them to their master's horses, they being carter and carter's boy, but not being answerable at all for the condition or appearance of horses.

The jury found that they took the oats with intent to give them to their master's horses, and without any intent of applying them for their own private benefit.

The learned judge reserved the case for the opinion of the judges on the point, whether the prisoners were guilty of larceny.

Lord Denman, C. J., Tindal, C. J., Parke, B., Patteson, J., Williams, J., Coltman, J., Rolfe, B., Wightman, J., Cresswell, J., Erle, J., and Platt, B., met to consider this case.

The greater part of the judges present, (exclusive of Erle, J., and Platt, B.), appeared to think that this was larceny, because the prisoners took the oats knowingly against the will of the owner, and without colour of title or of authority, with intent not to take temporary possession merely, and then abandon it, (which would not be larceny,) but to take the entire dominion over them; and that it made no difference, that the taking was not *lucri causa*, or that the object of the prisoners was to apply the things stolen in a way which was against the wish of the owner, but might be beneficial to him. But all agreed that they were bound by the previous decisions, to hold this to be larceny, though several of them expressed a doubt if they should have so decided, if the matter were *res integra*.

Erle, J., and Platt, B., were of a different opinion; they thought that the former decision proceeded in the opinion of some of the judges on the supposition, that the prisoners would gain by the taking, which was negatived in this case; and they were of opinion that the taking was not felonious, because to constitute larceny it was essential that the prisoner should intend to deprive the owner of the property in the goods, which he could not, if he meant to apply it to his use.

We hope it will not be thought disrespectful to the very learned judges who considered this case, if we venture to regret that it was not argued by counsel. Every lawyer knows that a case decided after full argument differs materially in value from one which was decided without any argument at all; and it will scarcely be denied that no set of men, be their knowledge and abilities ever so great, can at a given time weigh all the *pros* and *cons* of a case as efficiently as if the task of suggestion had been assigned to counsel who had prepared themselves beforehand, and that of judging alone had been left to the Bench. And as we believe this decision to be unsatisfactory to the Bar, and repugnant to the common notion of theft entertained by the public

at large, we shall respectfully offer such reasons as might have been urged on behalf of the prisoners had the case been argued before the judges.

It is observable that the decision extends the definition of larceny further than the actual facts of the case require. The jury find by their special verdict that "the prisoners took the oats with intent to give them to their master's horses, and without any intent of applying them to their private benefit;" thus not finding whether or no they meant thereby to do their master an injury; the judges pronounce that matter to be quite immaterial, and hold it to be larceny, even though the object of the taker might be indifferent, or even beneficial to the owner of the property. So that, coupling the actual matter decided with the principles enunciated, this broad proposition seems to be laid down,—“That any taking contrary to the known will of the owner, with an intent to deal with the property so as necessarily to deprive the owner of the specific thing taken, is a larceny, though the taker never intended to lessen the property of the owner, nor to dispose of the thing absolutely as his own, but solely to benefit the owner by a new disposition of his property.”

The mere terms of this definition may cause lawyers to suspect its accuracy: the unlearned reader may judge better from the following illustrations:—

A child is entrusted to a nurse, who is strictly charged to give it a certain quantity of milk in the day, and no more. The nurse thinks the child would do better on more-milk, and therefore, wilfully disobeying the parents' orders, to whom the milk belongs, she gives the child more milk. She is guilty of larceny by taking this additional quantity of milk; and if the milk taken were more than 12*d.* in value, she would at common law have been liable to be hanged; and that although the child was much benefited by the increased allowance of food, and an eminent service thereby rendered to the parent. So if *A.*'s farming wilfully sows *A.*'s field with nine bushels of oats, when he is charged to sow it only with eight; if his gardener wilfully plants out roots in February, when charged not to do it till May, and the roots consequently die; his servant wilfully brews *A.*'s beer with six strike of malt when charged to brew it only with five; a painter wilfully paints *A.*'s house with three coats of *A.*'s paint, when charged to paint it only with two: all these acts of misconduct would by

the above definition be larceny! It is needless to multiply instances. It seems clear that if the above definition be correct, any wilful misapplication of property by a servant, whereby the master is deprived of the specific articles so misapplied, is a larceny, even though the servant intended to benefit the master by such misapplication. Now, though lawyers may call this larceny, people in general will never call it stealing. And as legal definitions of crime which are violently opposed to popular notions and common language seem to be erroneous somehow or other, it may be well to examine whether there be any error here, and if so, where and what it is. For in a constructive science like the law, the evil of an erroneous definition does not end with itself, but is made the basis of numberless other errors, which are perhaps much more important.

We have said that the above definition seems to be deducible from the decision taken as a whole; that is, from the facts of that particular case, and the principles of law which are there held to be applicable to those facts. It is, therefore, important to ascertain—first, what those principles are, and whether they are sound; secondly, what are the actual facts, and whether the principles, if sound, really apply to them.

First, The majority of judges seem to have held, that to constitute theft the intent must be “to take the entire dominion over the property,” and the two judges who were in the minority thought that the intent must be “to deprive the owner of his goods.” The majority say in effect,—“The taker must intend to deal with the property as his own to all intents and purposes.” The minority say in effect,—“He must intend wholly to deprive the owner of his property.” There seems, therefore, to be no difference of opinion among the judges in this particular case, as to the nature of a felonious intent nor any ground for supposing that the principles there stated are incorrect. Secondly, The facts of the case are to be found in the special verdict, and if the doctrine of a felonious intent, as above stated, applies to them, it must be because the jury have in effect found that the prisoners, at the time of the taking, intended “to take the entire dominion over the property, and to deprive the owner of his goods.” For if it is consistent with the taking actually found that they had not such intention, it seems clear that the taking as actually found was not felonious. The jury actually found that “the prisoners took the oats with intent to

give them to their master's horses, and without any intent of applying them for their private benefit." The only intent they find is the intent of giving them to their master's horses, and the intent which they negative is the intent of benefiting themselves. It is clear, therefore, that there is *no express finding* of an intent "to take the entire dominion over the property, and to deprive the owner of his goods." Where then is the felonious intent? Two grounds may be suggested for supposing the existence of such intent, but neither of them seems maintainable.

1. It may be said that there is an *implied* finding of an intent to take the entire dominion over the property; for the intent to give the oats to the master's horses *must be deemed* an intent "to take the entire dominion over the property," just as much as if they had intended to pass them to another, either by way of gift, sale, or exchange, or to destroy them; any of which intents would be clearly felonious.

But there seems this obvious difference between the two cases. Selling, giving, or exchanging away goods to another, or destroying them, is an assertion of a right to the absolute disposal of them by the takers, as completely as if they were their own, whereas the giving them to the master's horses, and so changing their specific form, is not asserting a right of ownership at all, but only a right to apply to one branch of the master's service property entrusted to them for another branch of that service, the application in either case being to the service of the owner of the property. In the case of a taking to sell, &c., the taking is at variance with the ownership of the master, in the present case it is consistent with it. The former is a breach of trust and something more; the latter is a breach of trust simply, and would be so legally, were it not for the technical rules of law, by which the possession of the servant is held to be the possession of the master. The former accords with the popular notion of theft, the latter with the popular notion of misconduct in service. The former consists in wrongfully giving the oats of *A.* to *B.*; the latter in wrongfully sowing *A.*'s field with nine bushels of *A.*'s oats, when you are charged to sow it with eight: in painting *A.*'s house with three coats of *A.*'s paint, when you are charged to paint it only with two: in brewing *A.*'s beer with six strike of *A.*'s malt, when you are charged to brew it only with five: in giving *A.*'s child two pints of *A.*'s milk, when you are charged to give it only one.

In all these cases you assert a dominion over *A.*'s property, and such a dominion as to prevent him ever regaining his dominion over the *specific* articles so misapplied. But you do not assert an *entire* dominion over them, for you apply them in a manner consistent with his right of ownership, but wholly inconsistent with yours. Therefore, there is not, in point of fact, a disposal of the property *as though it were absolutely your own*, nor does any intention to do so ever operate on your mind, or suggest itself as a motive! Yet it is in the supposed existence of this intent alone that the felony consists! It seems, then, that the felonious element which the majority of the judges considered essential to larceny, viz., the intent "to take the entire dominion over the property," neither existed here, in fact, nor was found by the jury.

2. Let us now examine whether there is any implied finding of the felonious element which the minority of the judges considered essential to larceny, viz., the intent to deprive the owner of his property.

It may be contended, that the intent to give the oats to the master's horses, must be taken to be an intent to deprive the owner of his property, because a man must be taken to intend the necessary consequence of his own acts; and the necessary consequence of the horses eating the oats is to deprive the master of that specific chattel.

But there are several objections to this reasoning. 1. It is by no means universally true that a man must be taken to intend the necessary consequences of his acts. 2. That in the present case the application of such a maxim would materially alter the intent as found by the jury; and turn that into a felony, which as found is only a trespass. 3. That it seems extremely difficult to show that a mere intent to deprive the owner of the specific chattel taken (even where such intent is proved to exist, which is not the case here) without any intent to deprive him of his right of property in such chattels, or to assert a right to the absolute disposal of the goods, is sufficient to constitute larceny. But this third consideration, though very important as regards the general principles of larceny, is not needed for the decision of the present case.

1. It is very commonly said in Courts of Justice, that "the law presumes a man to intend the necessary consequence of his own acts"—a phrase which is untrue in practice and absurd in principle. That it is untrue in practice is proved beyond a doubt, by the every-day instance of assaults with intent

to do grievous bodily harm: for there, where a man is proved to have wilfully inflicted a wound with a knife, the necessary consequence of which is grievous bodily harm to the person wounded, the jury are always directed to consider whether the prisoner inflicted the wound with the intent of doing grievous bodily harm, or no, because, in the latter case he will be only guilty of a common assault. But if the law presumed every man to intend the necessary consequence of his own acts, judges would be bound to direct the jury to find the prisoner guilty of felony, on proof of the wound being such as to amount to grievous bodily harm, and either the jury would be absurd if they did not find such an intent, or the law would be absurd which required them to do so. However, neither the law nor the jury are actually in this dilemma, for the phrase itself is absurd in principle, as appears at once from the consideration that it is wholly impossible for the law to declare before hand as a matter of fact, what are the ideas which pass through any man's mind at the time of his doing any act whatever. It must in each and every case be a question of fact to be ascertained and determined by a jury, with which the law, *quid* law, can have nothing whatever to do. In truth, it seems, that there can be no such thing as a "Presumption of Law," in criminal cases, other than the invariable rule of the English Law, that every thing is to be presumed in favour of the prisoner; and that the burden of proof is in every case cast upon the Crown. The phrase "Presumption of Law" is a technical expression drawn from the principles of pleading in civil cases, and has reference to the liability of plaintiff or defendant to prove their respective cases. Thus the law presumes, that a deed was executed for proper consideration: that a deed 30 years old was duly executed, and many other articles of the like kind, which therefore need not be proved by the one party, unless the contrary is apparently made out by the other. But no presumption of this sort can arise on the plea of not guilty to a criminal charge; for by that plea every material fact in the charge is not only denied by the prisoner, but presumed in his favour by the law, until the Crown satisfies the jury of his guilt by positive proof, rebutting the legal presumption of his innocence. The only meaning therefore that the phrase "Presumption of Law" can have, as applied to a criminal charge is, that in the absence of evidence to the contrary, the law authorizes juries to

And, that a man intended to do what he is proved actually to have done; and empowers judges to direct juries to do so. But if it be contended that the law presumes a particular intention in the absence of, or distinct from any such finding by a jury, this monstrous consequence would follow, that the judges might attach certain motives to certain acts as incidents *legally inseparable*, and the very gist of a criminal offence, namely, *the intent of the party*, would be taken away from the consideration of the jury, and be imputed to the accused by an arbitrary rule of constructive law, without the smallest reference to the real truth and fact of the case.

2. In this case the application of such a maxim would materially alter the facts as found by the jury. For here the question, which was one *solely for the jury*, was this,—“Did the prisoners, at the time of taking the oats, intend thereby to deprive the owner of his property?” that is,—Did that result operate on their minds as a motive to commit the act? If it did not, then that criminal intent is wanting. Whether that question was left to the jury in the present case does not appear from the report; but be that as it may, have the jury found such motive by their special verdict? No. The only intent which they found was an intent to give them to their master's horses. Therefore, the other and additional intent, viz., “to deprive the owner of his property,” is a *constructive intent* supplied by the judges, and superadded to the finding of the jury, and is an intent wholly distinct from, and opposed to, the intent actually found; for it imputes to the prisoners a motive of malice, while the only motive found by the jury is a motive which can only be regarded as one of mistaken benevolence. It is a substitution of the result of the act (which might or might not have been foreseen and intended at the time, but which in this case is not found by the jury to have been foreseen or intended,) for the *actual foreseen end and object*, which alone can constitute a motive for action. It is an unjustifiable conversion of a question of fact into a question of law, by applying to the criminal law a doctrine of which the fundamental rules of that law forbid the application; and it is an incorrect application of it, were the application allowable; for even if a man is to be presumed to foresee and intend the necessary consequences of his acts, the word “presumed” shows that this constructive intent may be disproved by evidence, or negatived by the jury; and

here the jury find the actual intent to be quite a different one. It is as though their verdict was as follows:—"That they took the oats against their master's wish, but not with the intent to deprive him of his property, or to benefit themselves, but solely with intent to give them to his horses;" and "for the benefit of the horses" might be added, because the judges say in this case that such motive does not make it the less a felony; yet it is obviously very important as regards the state of mind of the prisoners.

Had the above verdict been found in *express terms*, it would have been in law a verdict of "not guilty." As it now stands, it is in effect precisely the same; for the constructive addition supplied by the judges was unauthorised by, and opposed to, the facts as found by the jury; and as the right of so dealing with a special verdict is expressly disclaimed by the Bench in civil actions, it is surely infinitely more important to regard a special verdict in a criminal case as a complete statement of facts, to which the judges are bound to apply the law, but are not entitled to add to or alter in any way whatever. If this be so, it would certainly seem that neither the felonious element which the majority of judges considered essential to larceny, nor that which the minority so considered, existed in this case. It therefore becomes unnecessary to consider the third objection above stated, though as it is very important to a right understanding of the real nature of larceny, we may perhaps hereafter advert to it.

However, it may be well to point out here some of the incidents and consequences of the above decision.

If the prisoners repeated the offence, or were guilty of a like act of misconduct in service, they would be liable to be transported for life; two such acts of domestic misconduct being deemed of equal enormity with one case of malicious stabbing, or with one case of rape! A foreigner would be surprised to learn that by the English law, a groom wilfully giving an extra feed to his master's horse, contrary to orders, was punishable with transportation for 14 years, whereas, had he been a stranger and stolen the oats for his own gain he would only have been liable to transportation for seven years; and was guilty of a much heavier offence than if he had carnally abused a girl above 10 and under 12 years of age! that crime being only a misdemeanour punishable with imprisonment and hard labour. He

would probably think it no less strange that if a nurse, contrary to orders, though from the kindest motives, gave the master's child more milk than she was authorised to do, and thereby, quite contrary to her intentions, caused its death, she would be guilty of murder! Yet such would be the case; for the death of the child would be the immediate consequence of her felonious act!

Again, as the offence of overfeeding cart-horses is a very prevalent one, and applications are constantly made to justices to deal with it summarily under the statute 4 Geo. 4, c. 34, s. 4, as a case of misconduct in husbandry, it is highly important to justices and their professional advisers to know the precise nature of the offence, and to deal with it accordingly. The following statement may, therefore, be found useful:—

The case occurred a very few years ago, and, though naturally fresh in the recollection of the parties concerned, may surprise as well as warn those to whom it is new. A labourer was charged before two justices in Lincolnshire with having fed his master's horses with oats instead of hay, contrary to his master's orders. The intention of the complainant was to have the servant summarily punished, under the above statute for misconduct in service; and the justices, taking that view of the offence, ordered him to be imprisoned for one month with hard labour. The party convicted thereupon sued out a *habeas corpus*, and the gaoler having returned the commitment in which the conviction was set out, it was held by the judge who then happened to sit in the Bail Court, that the conviction was illegal, as the offence amounted to felony, and therefore did not fall within the jurisdiction of the justices. The prisoner was accordingly discharged, and then brought an action against the justices for false imprisonment, which was tried at the Lincoln Assizes, before the late Chief Justice Tindal. As the decision in the Bail Court was not shown to be erroneous, Chief Justice Tindal directed the jury that the plaintiff was entitled to recover the amount of the costs which he had incurred in procuring his discharge by *habeas corpus*.

Now, if there can be no felony without a felonious intent, and it be untrue that a man must be presumed in criminal cases to intend the necessary consequences of his own acts, it was impossible for any judge to pronounce this to be certainly a felony. For as the felonious intent could only be a matter of inference from the facts deposed to by the complainant, it became a question

of fact for the justices, just as much as it would on an indictment have been a question of fact for the jury; and therefore, prior to adjudication in either case, it would have been a question whether the facts amounted to a felony, or only to a trespass; and after adjudication, the finding of the justices could not have been impeached in the mode there adopted. However, if the present decision be correct, the justices were wrong, because the mere wrongful taking to give to the horses was of itself a felony, and must be so held as long as this decision stands. We earnestly hope it will be reconsidered, not only because of the strange legal doctrines involved in it, but because it clearly is a case far more fit for summary jurisdiction. The public at large certainly view it as quite different from an ordinary theft; and it is now much more likely to go unpunished altogether, from the unwillingness of prosecutors to treat their servants as felons liable to 14 years transportation for acts of misconduct, which, though wilful trespasses, are neither malicious nor dishonest.

If on re-consideration it should be held not to be a felony, it is a striking instance of the ill effects of leaving the crime of larceny undefined. For, strange to say, there is no complete definition of larceny to be found in any of the text books or decisions. Without troubling our readers with a detailed examination of the authorities on which our opinion is founded, we therefore venture to submit the following definition to the consideration of the profession. Larceny consists in "the wrongful taking and carrying away of a personal chattel, with knowledge by the taker that he has no right to the possession of it, and with intent to dispose of it as his own."

S. C. D.

ATTORNEYS' CERTIFICATE TAX AND OTHER GRIEVANCES.

In the *Postscript* of our last number we stated the course intended to be pursued regarding the bill for repealing the Certificate Duty, and shall now add some further particulars.

After the answer made on the 5th instant to the question of Lord Robt. Grosvenor by the *Chancellor of the Exchequer*, in which the latter did not deny the strong claim of the profession to relief, but declined to give any promise further than that he would fairly and fully consider the subject, Lord

Robt. Grosvenor said he would give due notice of any further motion. His Lordship, we understand, communicated to the Incorporated Law Society the result of his inquiry and the reasons for the steps he had taken—courteously requesting to know what course the profession wished to be adopted.

The Council could not but feel greatly obliged by the interest evinced by his Lordship in the measure. The Bill had been prepared at the instance, not only of the members of the Incorporated Society, but in consequence of the petition of a general meeting of metropolitan solicitors, and in concurrence with several provincial law societies. The Council therefore considered it incumbent on them, with the sanction of Lord Robt. Grosvenor, urgently to solicit that the Bill should be submitted to the House of Commons during the present Session, with a view to its being printed and laid upon the table for consideration early in the next, if nothing further could be effected in this Session.

The Whitsuntide recess has prevented for a week any further progress; but it should be recollected that the *Budget* is not yet completed, and, notwithstanding the assertions to the contrary, there is ample time to make all the way that any rational person could expect in the present Session.

Much was done two months ago, before the Easter recess. Two hundred members of the House were made fully acquainted with the merits of the case, and from time to time were reminded of the motion to bring in the Bill. This we think was a better course than sending a large number of small petitions to one member.

Notwithstanding these regularly continued efforts, it has twice been perversely reported that the Law Society had abandoned the measure, and every step they have taken has been censured by persons who profess to patronize the attorneys, but are manifestly seeking to disunite them. We have often exposed these misrepresentations, but the cobwebs are again and again re-constructed. The truth however must at last prevail.

The fallacy has been once more renewed that the London profession, and especially the most eminent part of it, has no sympathy with its brethren in the provinces. The learned gentleman who so often reiterates this assertion is misguided by a few of the lower class of his correspondents, and should take the trouble to inquire of better informed persons. The general meeting of solicitors in March last, two thirds of whom

were not members of the Incorporated Society, unanimously thanked the leading members for the interest they took in the general welfare of the profession, and unhesitatingly confided the case to their management. We trust that, setting aside all petty jealousy, there will hereafter be one united effort made, not only for the redress of this particular grievance, but for the removal of many other evils of equal importance to the well-being, and bearing perhaps more on the station and character of the profession, and the interests of the suitors: we mean, the taxes on justice, oppressive fees and sinecures;—unjust restrictions;—exclusion from honourable distinctions;—inadequate remuneration;—with a long list of “ills which the attorney is heir to;” and in the correction of which both the Incorporated Society and the Metropolitan and Provincial are zealously engaged.

COUNTY COURTS PRACTICE.

To the Editor of the Legal Observer.

SIR,—I ventured to trespass on your attention with a few remarks upon the inefficient and dilatory character of the proceedings of these new-fangled and expensive Courts, and as you have been so kind as to notice my observations, I again solicit your indulgence whilst I point out some more of the inconveniences arising to suitors in their pursuit of justice promised at a cheap rate by the act constituting these Courts.

In connexion with that part of my former letter pointing out the inconvenience of effecting service of process solely through the medium of the officer of the Court, another and greater one arises to the suitor from a want of that accessibility to the officers of these Courts which is so promptly accorded in the Superior Courts of Law at Westminster. In the County Courts you know nothing of them; you see them caged up like so many living curiosities; and if you ask questions, you are frowned upon, and evidently considered ignorant, and treated as unworthy of notice. I have frequently seen individuals of the humbler class, who came to drink of the cheap fountain of law, turn away disgusted with the sharp petulant reply of some official turncock. It is asserted by some defenders of the cheap system, that persons who do not understand legal technicalities should employ those who do; but how are the poor, who have but a few shillings due to them, to avail themselves of the services of a professional man, or even a man of business? It is totally out of the question. The non-payment of their little claim is to them a grievous detention; the loss of it, in many instances, their total ruin.

When a case is advocated in Court by counsel or attorney, the real matter in dispute is immediately brought to the judge's consideration divested of foreign matter: he knows what he is going to try, and shapes his course accordingly; but when two poor ignorant persons are addressing the Court, the judge is sorely perplexed, and sometimes for hours sits patiently listening to tales of woe and poverty, and other matters quite beside the dispute in hand. Again, it occurs very frequently that claims are made which have no foundation at all in law. In poor circles, as well as in rich, it often happens that claims arise based upon the pure principles of morality which are not cognizable in our Courts of Law. The rich man consults his legal adviser as to his claim, and being told that he cannot enforce it, puts up with his grievance. Not so the poor man: he has no legal adviser, and no money to pay one: he rushes into the County Courts, because he is persuaded that it is speedy in its action and cheap, and having lodged his plaint and paid for it, fancies he has done all that is necessary, and all that remains for him to do is to appear at the Court on the day of hearing, tell his story and get redress: cultivated and well-informed minds will say, this is all nonsense, that no sane person could be so stupid as to attempt anything of the sort; to such, I say, go to any of the County Courts and spend one day, and see whether I am not asserting a literal truth.

One instance will suffice to show the necessity of proceeding correctly in these as well as in all other legal tribunals, and it is only one instance out of a thousand. A mechanic sued a tradesman in the Islington Court, upon a bill of exchange drawn by himself upon and accepted by the defendant; defendant was personally served with the summons, but did not appear; the plaintiff produced the bill of exchange, and although the defendant did not deny his acceptance or the claim, this poor mechanic, not knowing better, brought no one to prove defendant's signature to the acceptance, and not being acquainted with defendant's handwriting himself, he was non-suited.

Long experience justifies me in saying, that if a small scale of fees, proportioned to the sum claimed, were allowed in these Courts to attorneys, one moiety of the grievances complained of by suitors in these new Courts would be avoided, and the other moiety greatly mitigated.

T. H. W.

[We cannot concur in the practicability suggested by our correspondent, of the appointment of a public officer to inquire into and assist poor suitors in their claims or defences, and therefore we have deferred that part of the letter. Perhaps our correspondent will reconsider his plan and write further upon it.—*ED.*]

LAW STUDENTS' SOCIETIES.

We gladly give publicity to the following Statistical Table of Law Students' Societies, and rejoice at the progress made within the last two years. The Corresponding Secretary of the Worcester Law Students' Society does the Legal Observer no more than

| Names of Societies. | Date of their Establishment. | Persons eligible as Members. | Objects of each Society. |
|--|------------------------------|---|---|
| <i>Bath.</i> Law Students' Society. | | Any gentleman studying for the Bar, or serving, or who has served, under Articles of Clerkship, and has not been admitted as an Attorney or Solicitor more than three years. | The advancement of its Members in the knowledge and study of the Law. |
| <i>Birmingham.</i> Law Students' Society. | January, 1843. | Any gentleman studying for the Bar, or serving, or who has served under Articles of Clerkship, and has not been admitted as a Barrister, Attorney, or Solicitor, more than three years. | The advancement of its Members in the knowledge and study of the Law. |
| <i>Liverpool.</i> Junior Law Society. | June 18th, 1846. | Any gentleman serving, or having served, under articles of Clerkship, not being in actual practice. | The mutual improvement of its Members on subjects connected with the Law and General Jurisprudence. |
| <i>London.</i> The Law Students' Society | May 31st, 1846. | <p><i>Honorary Members.</i> The Secretary and Members for the time being of the Incorporated Law Society.</p> <p><i>Ordinary Members.</i> Gentlemen serving under Articles of Clerkship to Members of Incorporated Law Society. Any gentleman who have served their Articles and are in the Office of such Members, and not in actual practice, and Subscribers to the Library or Lectures of the Incorporated Law Society.</p> | The discussion of Legal and Jurisprudential questions. |
| <i>Muncheſter.</i> Law Students' Society. | March, 1845. | All gentlemen who are serving, or have served, under Articles of Clerkship, (not in actual practice.) | To afford facilities for improvement of its Members. |
| <i>Plymouth and Devonport.</i> Law Students' Society. | Sept. 10th, 1845. | Any gentleman studying for the Bar, or serving, or who has served under Articles of Clerkship, and has not been admitted as an Attorney or Solicitor more than three years. | For the advancement of Members in the knowledge and study of the Law. |
| <i>Worceſter.</i> Law Students' Society. | January 26th, 1846. | Any gentleman studying for the Bar, or serving, or who has served under Articles of Clerkship, and has not been admitted as an Attorney or Solicitor more than three years, and who is a Member of the Worcester and Worcestershire Law Society, or a Subscriber to the Library of such Society. | The advancement of its Members in the knowledge and study of the Law. |

LAW STUDENTS' SOCIETIES.

justice when he says that we have "the welfare of the profession at heart, and are always ready to countenance measures to improve the character and increase the knowledge of its members." We trust these very useful societies will increase and multiply.

| Mode adopted for carrying out Objects. | Time and Place of holding Meeting. | Number of Members. | Officers of each Society. |
|--|--|---|--|
| <i>Vivá Voce.</i> Discussion of Moot Points, Examination Questions, &c. | Every Monday at 7 o'clock p. m., at No. 1, Vineyard, Bath, with adjournments. | Ten. | Secretary, Mr. A. B. Were. Corresponding Secretary, Mr. J. K. Bartrum. |
| <i>Vivá Voce.</i> Examinations and discussions of a legal work and of Moot Points, Examination Questions, &c. | Every alternate Wednesday evening, at the Public Office, Moor Street, Birmingham. Chair taken at $\frac{1}{2}$ past 7 o'clock. | Fifteen. | A Committee, consisting of W. B. Goodman, Secretary, Henry Small, 15, Waterloo Street, Corresponding Secretary, and three other Members. |
| <i>Vivá Voce.</i> Debates on subjects proposed by the Members, and by Original Essays. | The first and third Tuesday in every month, at $\frac{1}{2}$ past 5 p. m., at the Liverpool Law Society's Room, South John Street. | Sixteen. | President, Robert Norris, Esq. Vice-President, Edward Whitley. Secretary and Treasurer, Henry C. Duncan. |
| The argument by the ordinary Members of one Legal and one Jurisprudential Question at each meeting. | Tuesday in every week, except the period from the first Tuesday in August, and the last Tuesday in Christmas and Easter weeks, at 7 o'clock p. m., in one of the Rooms of the Law Institution, Bell Yard, Chancery Lane. | Twenty-nine at present (this is rather below the average) | President and Vice-President elected monthly. Treasurer, Auditors, Secretary, and Corresponding Secretary. Committee, consisting of a President, and two other Members. For information respecting the Society, apply to the Secretary or Corresponding Secretary, Ball Yard, Chancery Lane, London. |
| The arguing of Legal Points and occasional Reading and Discussion of Original Essays on Legal Subjects. | Every alternate Monday evening at $\frac{1}{2}$ past 7, in a room of the Manchester Law Association. | Twelve. | President, (a Member of the Manchester Law Association), Vice-President, who is also Treasurer, and a Committee of six, out of which are chosen the Vice-President, Secretary, and a Corresponding Secretary. |
| <i>Vivá Voce.</i> Discussion of Moot Points, Examination Questions and other matters approved by the Committee. | Every Friday at seven o'clock p. m., alternately at the Guildhall, Plymouth, and at a room of the Civil and Military Library, Davenport. | Twelve. | President, Mr. Briggs. Secretary, Mr. Hughes. Corresponding Secretary, Mr. Cole, 30, Portland Square, Plymouth. Treasurer, Mr. Jeffrey. These form a Committee. |
| <i>Vivá Voce.</i> Discussion of Moot Points, Examination Questions, and other special matters approved of by the Committee. | Every Monday at seven o'clock p. m., in the Worcester and Worcestershire Law Society's Room, Foregate, Worcester, with adjournments. | Nine. | Secretary, William Cortes, jun. Corresponding Secretary, James Tree, Bransford Road, Worcester. Treasurer, William Menee. These form a Committee. |

INCORPORATED LAW SOCIETY.

MR. WARREN'S LECTURES.

MR. WARREN commenced his third lecture by saying that the subject on which he had undertaken to speak was so extensive that it required twenty instead of only four lectures to do anything like justice to it; and that the limits assigned to him had compelled him not only to omit much that he had prepared, but to compress that which he delivered into the smallest possible compass. He then proceeded to intimate his opinion that a youth's first twelve-month in the office should be entirely devoted to mastering the details of the business papers around him, and particularly to acquiring an intelligent familiarity with the structure of ordinary legal instruments and the permanent necessity of *accuracy* in copying them for use. Mr. Warren gave two striking illustrations of this latter suggestion. In one of them a large debt was lost because of a variance made by a clerk in one letter "s" in copying the word "sheriff" from a *capias* as "sheriffs;" adding that Mr. Butler, the eminent conveyancer, occasioned the loss to a lady of 14,000*l.* a year, by inadvertently omitting *one word*, in drawing a will! "Therefore," said Mr. W., "the clerk should be trained from his very outset, to habits of rigorous accuracy. He deprecated imposing the necessity of legal *reading* on a youth in his first year—but recommended the little work of Mr. John William Smith, called "The Elementary View of an Action at Law," as one which he ought from the first to have constantly beside him. When a little further advanced, the clerk should address himself to the study of the leading doctrines of *Contracts*, and of *Property* real and personal: and most strongly recommended the lectures on *Contracts*, delivered by Mr. J. W. Smith in the hall of the Society, and recently published from his MS.; and the two little *Treatises* of Mr. Joshua Williams, on the Law of Real and Personal Property. Mr. W. also spoke in high terms of Mr. Davison's "Concise Precedents" in Conveyancing, as instructive models of a terse and lucid style of drafting:—adding, that these works he had some years ago recommended in a work of his, (alluding, we presume, to his "Popular Law Studies,") and saw no reason to alter the opinion which he had there expressed.

One practical suggestion was of peculiar importance—*viz.*, that the student should,

in some degree, give his attention to the acquisition of that sort of peculiar knowledge, which he might have need for in the locality where he might expect his lot to be cast, *viz.*, whether in commercial or agricultural districts,—in town or country, in inland, or sea-port towns.

Mr. Warren strongly recommended studying for a year in a conveyancer's or pleading barrister's chambers, enforcing it by some very pertinent and cogent reasons. He proceeded to speak of the facilities afforded for study by the Law Institution, in its library and lectures: as to which latter, Mr. Warren elicited a burst of hearty laughter, by speaking of himself, in delivering his "intercalary" lectures, as very likely to be looked down on by the "regular" lecturers of the institution, much as a regular policeman might be supposed to glance at a poor special constable,—an adept at a novice. He then alluded in terms of startling significance to many present, to the functions of the examiners, which would be exercised on the morrow in that hall; assuring them that they would find it a *real* examination, calculated to "test real progress, and defeat a foolish, fraudulent, and temporary *exam.*" He implored them not to drop into indolence and carelessness the moment that they had *passed*, but to set more in earnest than ever about their studies to fit them for the "occasions sudden" which awaited them; and gave a striking representation of a testator suddenly seized with mortal illness, sending for an incompetent adviser, and thereby unconsciously entailing ruin on all whom he thought he was benefiting; but he contrasted this very vividly with the peace and happiness secured to such a family by a discreet and skilful practitioner.

Mr. Warren next urged the young attorney to accustom himself to exertion—to put his own shoulder to the wheel in difficulties, and not place undue reliance on the assistance of counsel, by consulting them in cases where the law presumed *themselves* to be equal to the duty which they devolved on counsel. "Doing this would soon vitiate the temper of the mind, and sap the foundations of self-reliance." He proceeded to quote from a valuable judgment of Lord Chief Justice Tindal, (*Godefrey v. Dalton*, 6 Bing. 460,) a passage which he said ought to be "hung up, framed and glazed, in every attorney's office in the kingdom."

Mr. W. gave some highly important and most interesting illustrations of the vexatious and mortifying consequences of an attorney's inadvertence or unskillfulness, taken advantage of by illiberal practitioners, and vindictive and ungrateful clients. "At the sight of *your* Bill, gentlemen," said Mr. W. with a very significant smile, "all recollection of your *services*,—your sacrifices, and exertions,—vanishes into thin air?" He proceeded to inculcate a liberal and generous spirit in conducting business—scorning the taking advantage of petty slips of an opponent whom a person so treating, was simply "plundering." Mr. W. gave two or three instances of pettifogging advantages of this sort, amidst the loud laughter of his audience, who loudly applauded his indignant appeal to them at the close.—"Gentlemen, will *you* do things so dirty—so detestable—as those? Would *gentlemen* act thus in their private intercourse and transactions with each other?"

He concluded the lecture with some weighty cautions to the young practitioner, against indulging sanguine and extravagant views and expectations of success at starting; and commencing operations on a scale too expensive and ambitious. He said that this was "putting a mill stone round their necks" just as they were starting in the race—destroying all sense of happiness, tranquillity, and independence—and "impairing their power to resist temptation, when it offered itself to an embarrassed man."

Such was the scope of the third of these interesting lectures. We shall give a concise notice of the fourth and last in our next number. Having had the advantage of hearing the whole course, we may venture to express the general opinion of all who were present, that Mr. Warren admirably succeeded in this well-chosen exercise of his learning as a lawyer and his genius as a writer. The profession and the public will soon be able to judge of the entire series of these splendid *orations*, for so we may term them, as was abundantly testified by the deep attention with which they were listened to, and the reiterated applause which they excited.

SATISFACTION OF JUDGMENTS.

REGULA GENERALIS.

Trinity Term, in the 11th year of the reign of Queen Victoria.

WHEREAS by a Rule of Easter Term, in the seventh year of the reign of her present Ma-

esty Queen Victoria, it was ordered, "That for the future it shall not be necessary to have a warrant of attorney to acknowledge satisfaction of a judgment, or a judge's fiat thereon; but that it shall be requisite only to produce a satisfaction piece similar to that used in the Court of Queen's Bench, except that in all cases such satisfaction piece shall be signed by the plaintiff or plaintiffs, or their personal representatives; and such signature or signatures shall be witnessed by a practising attorney of one of the Courts at Westminster, expressly named by him or them, and attending at his or their request to inform him or them of the nature and effect of such satisfaction piece, before the same is signed, and which attorney shall declare himself in the attestation thereto to be the attorney for the person or persons so signing the same, and state he is witness as such attorney; but any judge at chambers shall have power to make an order dispensing with such signature of the plaintiff or plaintiffs, or their personal representatives, under special circumstances, as he may think right; and that in cases where the satisfaction piece is signed by the personal representative of a deceased plaintiff, he shall prove his representative character in such way as the Master may direct." It is ordered, That so much of the said rule as requires a satisfaction piece similar to that in use in the Court of Queen's Bench to be produced, be revoked, and that the following form of satisfaction piece be in future used in lieu of the same:—

In the Term, in the year of the reign of Queen Victoria.

to wit. Satisfaction is acknowledged between plaintiff and defendant

in an action for and And do hereby expressly nominate and appoint Attorney at Law, to witness and attest execution of this acknowledgment of satisfaction.

Judgment entered on the day of in the year of our Lord 184 Roll No.

Signed by the said in the presence of me of

one of the Attornies of the Court of at Westminster, and I hereby declare myself to be attorney for and on behalf of the said expressly named by h and attending at h request, to inform h of the nature and effect of this acknowledgment of satisfaction, (which I accordingly did before the same was signed by h). And I also declare that I subscribe my name hereto as such attorney.

A. B., the above-named Plaintiff (Date) 184

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|-----------------|--------------|
| DENMAN | T. COLTMAN |
| THO. WILDE | W. H. MAULE |
| FRED. POLLOCK | WM. WIGHTMAN |
| E. H. ALDERSON | C. CRESWELL |
| J. PATTERSON | W. ERLE |
| J. T. COLERIDGE | T. J. PLATT |

PROGRESS OF LAW BILLS IN PARLIAMENT.

Royal Assent.—9th June, 1848.

Annual Indemnity.
Removal of Aliens.
Insolvent Debtors, India.

House of Lords.

NEW BILLS IN PROGRESS.

Joint-Stock Companies. For 2nd reading.
Incumbered Estates Ireland. Re-committed.
Clergy Offences. For 2nd reading.—Bishop of London.
Amendment of Criminal Law. In Select Committee.—Lord Campbell.
Unnecessary Actions Prevention. In Committee.—Lord Campbell.
Bail by Coroners for Manslaughter. In Committee.—Lord Campbell.
Bankruptcy Law Amendment. For 2nd reading.—Lord Brougham.
Removal of Poor. In Committee.
Criminal Law Consolidation. For 2nd reading.—Lord Brougham.
Copyhold Enfranchisement Extension. For 2nd reading.—Lord Chancellor.
Independence of Parliament. For 2nd reading.—Lord Brougham.
Declaratory Suits. For 2nd reading.—Lord Brougham.
Game Certificates. For 2nd reading.
Petty Bag Office. Passed.

House of Commons.

NEW BILLS IN PROGRESS.

Administration of Justice out of Sessions. (No. 1). Passed.—Attorney-Gen.

Special and Petty Sessions. In Select Committee.—Attorney-General.

Protection of Justices. Passed.—Attorney-General.

Administration of Justice on Summary Convictions. (No. 2). Passed.—Attorney-Gen.

Agricultural Tenant-right. For 2nd reading.—Mr. Pusey.

Roman Catholic Relief. In Committee.—Mr. Anstey.

Public Health. Passed.—Lord Morpeth.
Parliamentary Proceedings Adjournment.

To Establish an Appeal in Criminal Cases. For 2nd reading.—Mr. Ewart.

Exempting Small Tenements from Rates.—Mr. P. Scrope. For 2nd reading.

Parliamentary Electors Rates.—Sir De Lacy Evans. In Committee.

Highways. In Committee.

Remedies against the Hundred. Sir W. Clay.—For 2nd reading.

Vacating Seats of Insolvent Members.—For 2nd reading.—Mr. Moffatt.

Borough Elections. In Committee.
Commons' Inclosure. For 3rd reading.

Metropolis Police. In Committee.
Prisons. For 2nd reading.

NOTICES OF NEW BILLS.

Imprisonment before Trial.—Lord Nugent.
To Prevent Bribery at Elections.—Sir J. Pakington.

Game Laws.—Mr. Bright.
Rights of Outgoing Tenants.—Mr. S. Crawford.

Friendly Societies.—Mr. F. O'Connor.
Extending Election Franchise.—Mr. Wyld.
Assignment of Policies. Mr. Fagan.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Wenham v. Bourneman. May 1, 1848.

CONTEMPT.—NEW ATTACHMENT.

Where a party committed for contempt in not paying costs was released by an order of a judge at chambers, made by mistake, while the contempt continued: Held, that the proper course was to apply for a new attachment against him.

THIS was an application for the re-committal of Mr. Wenham, who had been taken on four distinct attachments for not paying certain costs, amounting to less than 20*l.*, and who, supposing that the 7 & 8 Vict. c. 96, s. 58, applied to such cases, had obtained his discharge from the Queen's Prison, under an order of Mr. Baron Platt, made apparently under a misapprehension of the facts, and which had subsequently been rescinded by the Court of Exchequer. The only question was,

whether Mr. Wenham could be re-committed on the former attachments, or whether a new attachment must issue against him.

Mr. *Bilton* for the motion.

Mr. *Wenham* defended himself in person.

Lord *Langdale*, after observing upon the error into which Mr. Wenham had fallen, in supposing that the act referred to applied to persons attached for contempt, said, that the prisoner having been discharged while the contempt lasted, a new attachment should issue. Mr. Wenham must pay the costs of the present application.

Ward v. Ward. May 5 & 29, 1848.

MOTION TO DISMISS SUPPLEMENTAL BILL.

Under an order that a bill be dismissed unless a supplemental bill be filed within a certain time, the plaintiff is bound, not only to file the supplemental bill, but to prosecute the

suit effectually, under the penalty of having the original bill dismissed.

THIS was a motion to dismiss the bill for want of prosecution. It appeared that the cause, after the bill had on two several occasions been amended by striking out some of the original plaintiffs, (see 6 Beav. 251,) came on to be heard on the 10th of November, 1843, and then stood over in consequence of an objection for want of a party whose absence had been objected to upon the answer, with leave to amend. The bill was not amended until the 11th Jan., 1845, and then only in consequence of a motion to dismiss. Soon afterwards the suit became defective by the bankruptcy of one of the plaintiffs; and in June, 1845, an order was made that the plaintiffs should file a supplemental bill to bring the assignees before the Court within 10 days, or the bill be dismissed, (see 8 Bea. 397). A bill of supplement was filed in July, 1845, in compliance with this order, but no subpoena had been served, nor appearance entered in it.

Mr. Selwyn for the motion.

Mr. Taylor, in opposition to it, contended that the motion was irregular, 1st, because it was a motion to dismiss generally, though made by some only out of several defendants; 2ndly, because the cause had been set down for hearing, and subpoenas to hear judgment served, both in 1843, and again in 1845, after which no motion to dismiss could be made; and 3rdly, because the motion applied to the supplemental bill, to which these defendants, not having been served, were not parties, as well as to the original bill. They should have entered an appearance, and then they might have moved to dismiss.

Mr. R. W. Bennett, for two of the present defendants, the assignees of the bankrupt plaintiff, dissented from the motion.

Lord Langdale, after stating the facts, said, in answer to the objection that a motion to dismiss the bill could not be made after the cause had been set down for hearing, that, if so, the plaintiff should have moved to discharge the Order of June, 1845. He considered that order to have made it imperative on the plaintiff to prosecute the supplemental suit effectually, as well as to file the bill. It was true that the defendant could not move in the supplemental suit, but he thought him entitled to the benefit of the order for the dismissal of the original bill as against himself. He could give no costs, because the defendant had asked more than he was entitled to, in applying to have the bill dismissed against the other defendants.

Vice-Chancellor of England.

Fowler v. Davies. March 22, 1848.

PAUPER EXECUTRIX.—SUIT FOR REDEMPTION.—LIFE ESTATE.

Where a redemption suit is instituted by an executrix entitled to an estate for life in the equity of redemption of certain property on

mortgage, she will not be allowed to prosecute the suit in forma pauperis.

IN this case it appeared that the plaintiff was entitled to an estate for life in the equity of redemption of certain mortgaged property; and on the 6th of December, 1847, she obtained an order at the Rolls, allowing her to carry on the suit in *forma pauperis*.

Mr. Roll now moved, on behalf of the defendants, to discharge the order, contending that it was contrary to the practice of the Court to allow an executor or administrator to be either pauper plaintiff or pauper defendant in a suit.

Mr. Amphlett, contra, urged that the executrix being beneficially interested in the suit as well as personal representative, the rule did not apply, citing Beames on Costs, 2nd ed. p. 79:—"But where, notwithstanding this rule, the administratrix had been permitted to sue in *forma pauperis*, but as the widow of the intestate, was beneficially entitled to a portion of the fund claimed, Lord C. Eldon refused to dispauper her, adopting the argument which her counsel made use of, namely, that, to the extent of her beneficial interest, she was virtually suing in her own right, and therefore not within the rule laid down in *Paradise v. Sheppard*, 1 Dick. 136; and the same distinction was afterwards acted upon by Sir C. Pepys, *M. R. Perrott v. Britten*, 19th March, 1835." He also cited an *Anonymous* case in 2 Mol. 338.

The Vice-Chancellor said, in the case of *Thompson v. Thompson*, the administratrix was beneficially interested, and was suing in order to recover assets, and therefore suing for the benefit of the estate. In the present case the plaintiff offered to redeem, if there should be found anything due, and if she succeeded in her right, she might raise money on the estate. It appeared to him irregular to allow her to sue in *forma pauperis*, and he did not consider himself bound by the case of *Thompson v. Thompson*; he should therefore discharge the order.

Vice-Chancellor Knight Bruce.

Branch v. Browne. Monday, May 29, 1848.

CREDITORS' SUIT.—COPYHOLD ASSETS.

A decree in a creditors' suit directed a sale of a portion of the real estate of a testator for payment of his debts. The sale took place of freehold and copyhold estates, of which A. B. was tenant for life, with contingent remainder over to her children as tenants in common in fee. On a petition under the act 1 W. 4, c. 47, praying that the tenant for life might be ordered to convey and surrender the property to the purchasers, the Court made the order, notwithstanding that the stat. 3 & 4 W. 4, c. 104, making copyhold estates assets for payment of debts had passed subsequently.

Thompson v. Thompson. L. J. Hall, June, 1820, (Mr. Beavan's own MS.)

In this case E. D. Brownne devised lands of freehold and copyhold tenure to his widow, Ann Browne, for life, with remainder to M. S. Jollye, for life, with remainder over to the children of the latter, as she should appoint, and in default of appointment, to all her children (whether by her present or any future husband) living at her death. The personal assets of the testator were insufficient to pay the debts, and on a creditor's suit being instituted, a decree for sale of part of the real estate was made. The sale was made of freehold and copyhold estates, and the sales being confirmed, a petition was presented on behalf of the plaintiffs, praying that the widow, the first tenant for life, might be directed to convey and surrender the property to the purchasers, under the 12th section of the statute W. 4, c. 47.

Mr. Grenside, for the petition, stated that the only difficulty was, whether the Court would make the order, considering that the copyhold estates were not, at the time of the passing of the above act, assets for payment of debts, but they had been made so by a subsequent act, namely the 3 & 4 W. 4, c. 104; as, however, the former act spoke of cases where the lands "shall be subject to payment of debts," implying a prospective operation, and as the statute 3 & 4 W. 4, c. 104, made owners of copyhold estates subject to the same suits as owners of freeholds so as to make them assets to pay debts, the Court could find no reason to doubt its authority to make the order.

Mr. Bromley and Mr. Rendall for the purchasers did not object.

His Honour said, that he thought the statute 1 W. 4, c. 47, had a prospective operation, and that the 12th section, when it said lands under that act or "by law," "shall be liable" to the payment of debts, meant by the law existing at such time as the case might arise. He thought most likely that conveyancers might take a very different view of the point on a future sale: but would make an order that Ann Brown, the first tenant for life, should convey and surrender the freehold and copyhold property to the several purchasers of the same, or as they should direct.

Queen's Bench.

(Before the Four Judges.)

The Queen v. Tyrwhitt. Trinity Term, 1848.

THE 8 & 9 VICT. C. 126.—PAUPER LUNATICS.
—ORDER ADJUDICATING SETTLEMENT,
AND ORDER OF MAINTENANCE IN SAME
INSTRUMENT.—SERVICE OF ORDER.—
APPEAL.

Under the 8 & 9 Vict. c. 126, an order adjudicating the settlement of a pauper lunatic, and an order of maintenance, may be comprised in the same instrument.

The order of maintenance may be made on the overseers of the poor of the parish to which the pauper lunatic belongs.

Under section 62, on appeal against an order of maintenance, the order adjudicating the settlement may be disputed.

In Hilary Term last, a rule nisi had been obtained for a writ of *certiorari* to remove into this court, an order made by R. P. Tyrwhitt, Esq., one of the metropolitan police magistrates, under the 8 & 9 Vict. c. 126, intituled "An Act to amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Lunatics in England." By section 58, it is enacted, that two justices therein specified may inquire into and adjudge the settlement of a lunatic. And by section 62, such justices are to make orders on the treasurer of the guardians of the union including any parish, or of any parish, or the overseers of the parish in which such lunatic shall be so adjudged to be settled, for payment to the treasurer of the guardians or overseers of the first-mentioned union or parish of all expenses incurred by or on behalf of such union or parish about the examination of such lunatic, his conveyance to the asylum, and expenses incurred within twelve calendar months previous to the date of such order for maintenance, lodging, and clothing for such lunatic, and for the future maintenance, &c., of such lunatic in such asylum or licensed house, &c.; provided always, that the guardians of any union or parish may appeal against the same in like manner as if the same were a warrant of removal, and in case of appeal, the party appealing or defending the appeal shall have all the same rights, powers, and privileges, and be subject to the same obligations in all respects as in the case of an appeal against a warrant of removal."

The order in question adjudicated the last legal settlement of J. Fuller, a pauper lunatic, to be in the parish of Kingsbury, in the county of Middlesex, and also ordered the expenses of conveying the lunatic to a licensed house for the reception of insane persons, for the expenses of maintenance incurred during the 12 calendar months before the date of the order, and for the future care and maintenance of the said pauper in the said licensed house, to be paid by the overseers of the poor of the said parish of Kingsbury.

The lunatic was first removed from the parish of St. Pancras to the licensed house. And the parish of Kingsbury forms part of the Hendon Union. Two objections were taken to this order:—1. That the order adjudicating the settlement of the lunatic, and the order of maintenance, were comprised in the same order, whereas there ought to have been separate orders. 2. That the order of maintenance was improperly made on the overseers of the parish of Kingsbury, and that it ought to have been made on the treasurer of the union to which the parish of Kingsbury belongs.

Mr. Prendergast and Mr. Howarth showed cause. Section 58 gives jurisdiction to inquire into the settlement of the lunatic, and section

62 enables the justices to make an order for the past and future maintenance of the lunatic. There is nothing in the statute to prevent both orders being made at the same time. The order adjudicating the settlement of the lunatic is good, although in the same instrument there is an adjudication on something else. It would be more convenient that both orders should be made at the same time, because on appeal against the order of maintenance, the settlement may be disputed. *Regina v. The Justices of Middlesex*,^a and *Ex parte the Overseers of Monkleigh*.^b The order is properly made on the overseers of the parish, because the statute gives the option of making the order either on the treasurer of the union or on the overseers of the parish.

Mr. Pashley, in support of the rule. It is a matter of doubt whether any appeal is given against the adjudication of the settlement. The order of maintenance only recites the settlement, it does not contain any direct adjudication as to the settlement, and the general rule is, that a writ of error or a writ of *certiorari* cannot be taken away by inference, and a right of appeal cannot be given by inference, but only by direct words. The settlement and maintenance are under separate sections, and there should be separate orders. In *Regina v. The Justices of Middlesex*, the order was made on the treasurer of the union, and the statute, when it mentions overseers of the parish, refers to those parishes which do not form part of a union. There is a good reason why the order should be made on the treasurer, because the overseers may not have any funds in hand, and by statute 5 & 6 W. 4, c. 69, s. 7, the guardians of a union are made a continuing corporation. *Paine v. The Guardians of the Strand Union*.^c If the order may be made on the overseers or the treasurer, either party might appeal, and great difficulty would necessarily arise.

Lord Denman, C. J. I think there is no doubt on either of these points. There is no reason suggested why the order adjudicating the settlement and the order of maintenance should not be in one and made at the same time. As to the other point, it appears to me more convenient that the order should be made on the overseers of the parish, and the statute clearly gives that power.

Mr. Justice Patteson. In cases where the settlement of the lunatic cannot be ascertained, then the 61st section directs the order of maintenance to be made on the parish which sends the lunatic, but where the settlement can be ascertained, then there is no reason why the order adjudicating the settlement and the order of maintenance may not be made at the same time. The act expressly says that the order may be made upon the treasurer of the guardians of the union, or on the overseers of the parish in which such lunatic shall be so adjudged to be settled.

Mr. Justice Coleridge concurred.

Mr. Justice Erie. It appears to me there is no objection why the order adjudicating the settlement and the order of maintenance should not be comprised in one instrument. The one is not affected by the other being joined with it. With respect to the power of appeal under the 62nd section, it is perfectly clear to my mind that the appeal against the order of maintenance includes an appeal against the order adjudicating the settlement. The order of maintenance is the same as an order of removal, and that always involves in it an appeal against the settlement. Then as to the question, whether the order was properly made on the overseers of the parish, it appears to me that where the words of the statute give the option, as these clearly do, whether the order should be served on the treasurer of the guardians or on the overseers of the parish, the convenience appears to be in favour of serving it on the overseers, because the treasurer is not bound to give notice to the overseers, and the time allowed for appealing may elapse before the overseers are aware that any such order has been made.

Rule discharged.

Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

Browne v. Barton. Michaelmas Vacation, 1848.

WARRANT OF ATTORNEY.—EXECUTION, DATE OF.—FRAUDULENT PREFERENCE.—EXECUTION ISSUED FOR TOO MUCH.

A deed or other writing must be taken to speak from the time of the execution, and not from the date apparent on the face of it. The date is only to be taken prima facie as the true time of the execution; but as soon as the contrary appears, the apparent date is to be disregarded, and the Court will not take into consideration the intention of the parties.

The Court will not set aside a warrant of attorney upon motion on the ground that it was given by way of fraudulent preference, but will leave that question to be decided by a jury. Nor will the Court set aside a warrant of attorney on the ground that execution was issued for too much, but will only set aside the execution pro tanto.

EARLY in the term, *Prideaux* obtained a rule, calling on the plaintiff to show cause why the warrant of attorney herein, and all subsequent proceedings, should not be set aside. The warrant of attorney was in the ordinary form, and was dated the 24th day of February, 1847, was under the seal of the defendant, and contained the usual release of errors. There was a defeasance in the following words:—

“Memorandum. The within warrant of attorney is given to secure the payment from the within-named John Barton to the within-named George Browne, of the sum of 255*l.*, on the

^a 2 New Sess. Cas. 661.

^b 3 New Sess. Cas. 94. ^c 8 Q. B. R. 326.

20th of March next, with the lawful interest of the same from the date hereof. And it is hereby agreed by and between the said parties, that no action, execution, or other process or proceeding, shall be commenced, sued out, or prosecuted against the said John Barton, his heirs, executors, or administrators, or against his or their lands, goods, or chattels, upon the judgment to be entered up in pursuance of the within warrant, until default shall happen to be made in payment of the sums above mentioned, and interest for the same as aforesaid; but if default shall be made in payment of said sums, the said George Browne shall be at liberty to issue execution for the whole amount of principal and interest remaining unpaid, besides costs of judgment and execution, sheriff's poundage, officers' fees, and other incidental expenses."

This defeasance also bore date the 24th of February, 1847.

By the affidavits on which the rule nisi was obtained, it was sworn that the warrant of attorney and the defeasance were in fact executed on the 20th of March, 1847; they were then kept by the defendant in his possession until the 29th of the same month, when he delivered them over to the plaintiff, who immediately issued execution, and levied for the whole amount mentioned in the defeasance. At this time, there was only 100*l.* actually due from the defendant to the plaintiff; but a further sum of 300*l.* originally due from the defendant to the plaintiff, had been secured by the joint and several promissory note of the defendant and a man named Hill; but this note was not yet payable. Just before the execution was levied on the warrant of attorney, the defendant became bankrupt, and the rule was obtained on behalf of his assignees to set aside the warrant of attorney and subsequent proceedings upon three grounds—first, that the warrant of attorney was given by way of fraudulent preference; secondly, because it was given, and execution issued, for more than was due; thirdly, because the execution was issued too soon.

Barstow showed cause, and contended, first, that although the affidavits on which the rule was obtained showed a *prima facie* case of fraudulent preference, yet that the Court would not try that question on affidavits, and deprive the plaintiff of the intervention of a jury. As to the second point, it was admitted that the execution was issued for too much; and so the assignees were entitled to relief by having the writ of *fi. fu.* amended, and the execution reduced, but the rule asked too much, when it sought to set the whole proceedings aside. Thirdly, as to the date, it was contended that the Court would not interfere. No doubt old cases might be found in which it was laid down that a deed shall speak from the day of its execution and not the day of the date; but the Courts now would look at the intention of the parties, and in the present case it was clear that the parties could not have intended that the execution was not to issue until the

20th of March, 1848, which is what is contended for on the other side.

Prideaux, in support of the rule. The warrant of attorney in this case is under seal, and is therefore a deed, which it must have been, as it contains a release of errors, and the principle to be collected from the cases is, that every document, whether under seal or not, shall speak from the time when it takes effect, that is, from the day of its execution if it be a deed, and if not under seal when made; this is laid down in *Clayton's case*, 5 Coke 1; no doubt, *prima facie*, a deed speaks from the day it bears date, but nothing so absurd was ever decided, as that it should speak from the day it bears date, when that date is proved to be a false one: see as to this an anonymous case in 3 Salkeld, 120; *Askey v. Sir Baptist Hicks*, Cro. Jac. 263, and *Steele v. Mart*, 4 B. & C. 272. As to that part of the rule which seeks to set aside the warrant of attorney and subsequent proceedings on the ground that it was issued for a great deal too much, it may be conceded that the Court will not do this, when this has happened through mistake, but that clearly was not the case here, both the defendant and the assignees have been prejudiced, and so the Court will set aside the warrant of attorney and the subsequent proceedings altogether. *Tilby v. Best*, 16 East, 164; *Laroche v. Wasbrough*, 2 Term R. 737; *Mongs v. Leake*, 8 Term R. 411. Then as to the question of fraudulent preference, that is clear by the affidavits.

Patteson, J. You need not argue that point. I certainly shall not set aside a warrant of attorney upon motion, on the ground that it was given by way of fraudulent preference; that is a question for a jury; as to the other points, I will consider them.

Cur. ad. vult.

Denman, C. J., subsequently delivered judgment for Patteson, J. In the case of *Browne v. Burton*, argued by Mr. Prideaux and Mr. Barstow, one of the objections to the warrant of attorney was that the execution issued too soon, that the defeasance stating the warrant of attorney to be for securing the payment of 285*l.* on the 20th day of March next, with lawful interest for the same from the date thereof, and this warrant of attorney being executed on the 20th of March, 1847, the principal money was not payable until the 20th of March, 1848. If the warrant of attorney had on the face of it borne date the 20th of March, 1847, that would undoubtedly be so, and the question is whether the circumstance of the date apparent on the face of the instrument, being on the 24th of February, 1847, makes any difference. The rule uniformly acted on from the time of *Clayton's case*, 5 Coke, 1, is that a deed or other writing must be taken to speak from the time of its execution, and not from the date apparent on the face of it; that date indeed is to be taken *prima facie* as the true time of its execution; but as soon as the contrary appears, the apparent date is to be utterly disregarded. The case of *Steele v.*

Mart, 4 B. & C. 272, is precisely in point as to this. It may be observed here, that by the language of the defeasance to this warrant of attorney, the principal was not to be paid on the very day of the execution of the instrument, for it provides for the payment of interest from the date thereof; neither was the warrant of attorney, although executed on the 20th of March, delivered to the plaintiff until the 29th, nine days after the time when it is contended the principal sum by *A.* became due.

Upon the whole, therefore, I am of opinion that the rule of law is clearly that the 20th of March mentioned in the defeasance must be taken to be the 20th of March, 1848, whatever may have been the intention of the parties, and that the execution being premature, the rule to set it aside must be absolute; but not to set aside either the warrant of attorney itself or the judgment; and as the rule asks too much, it must be absolute as to setting aside the execution without costs. I am of opinion that I cannot enter into the question of fraudulent preference, and that as to the excess in the execution, if good at all, the execution would only be set aside *pro tanto*.

Rule absolute to set aside the execution without costs.

Court of Common Pleas.

Meetan v. Nichols. Easter Term, 1848.

COUNTY COURTS ACT.—SUGGESTION TO DEPRIVE OF COSTS,—INSUFFICIENCY OF AFFIDAVIT.

To support a rule for entering a suggestion upon the record, in order to deprive a plaintiff of costs, under the County Courts Act, 9 & 10 Vict., cap. 95, sec. 129. the defendant's affidavits must negative the causes specified in the 128th section, and by a reference thereto, excepted from the operation of the 129th section, which takes away the right to costs.

A RULE *nisi* had been obtained in this case to enter a suggestion under the County Courts Act, 9 & 10 Vict., cap. 95, in order to deprive the plaintiff of costs in the action.

Lush, on behalf of the plaintiff, showed cause, and objected that the affidavit upon which the rule had been obtained, contained no statement

negating that neither the plaintiff, nor the defendant was an officer of the County Court, as it ought to have done, in order to take the case out of the operation of the 128th section of the County Court Act, giving a concurrent jurisdiction to the Superior Courts at Westminster.

Talfourd, Serjeant. It was sufficient if the affidavit showed, as it did, that the case came within the jurisdiction of the County Court, under the provisions of the 58th section of the County Court Act. It was for the plaintiffs to show, if it were so, that the case fell within the exceptions contained in the 128th section, and the defendant need not negative them in his affidavit.

Wilde, C. J. Can you omit to negative that part of the 128th section, which relates to officers, any more than you can that which applies to the place where the cause of action arises?

Creswell, J. The 128th section gives a concurrent jurisdiction, "where the plaintiff dwells more than 20 miles from the defendant, or where the cause of action did not arise wholly, or in some material point, within the jurisdiction of the Court within which the defendant dwells, or carries on his business, &c., or where any officer of the County Court shall be a party, except in respect of any goods, &c., taken in execution by the process of the Court," &c. Then, by the 129th section, the plaintiff cannot recover his costs in "any cause other than those last hereinbefore specified," which words certainly include cases where an officer of the County Court is a party.

Talfourd, Serjeant. Yes, but then it is submitted, the exception is by way of proviso, and ought to come from the other side.

Per curiam. The affidavit is defective, as it does not negative that an officer of the County Court is a party to the action. The concurrent jurisdiction of the Superior Courts, expressly reserved by the 128th section, can only be got rid of by showing in the affidavit, that none of the exceptions apply to the present case, *prima facie* the plaintiff is entitled to his costs, and it is for the defendant, in availing himself of the County Courts Act, to state in his affidavits, all that is necessary to deprive him of his right in that respect, and amongst other things, that this is not one of the cases in which costs are still allowed.

Rule discharged.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

EVIDENCE.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.
Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.
Law of Property and Conveyancing, p. 75.
Principles of Equity, p. 103.
Pleadings, 131.]

ADMISSIBILITY OF EVIDENCE.

Decree.—Every decree, although it only

direct issues or inquiries, ought to recite the evidence on which it is founded, and therefore, where evidence is tendered and objected to, the Court ought to decide at once upon its admissibility, and not to allow it to be entered as read *de bene esse*. *Parker v. Morrell*, 2 Phill. 453.

See Legitimacy; Pedigree.

ANSWER OF CO-DEFENDANT.

The answer of a co-defendant cannot be received in evidence on an inquiry before the Master. *Meyer v. Montriou*, 9 Beav. 521.

CORROBORATION OF WITNESS.

Where, upon the trial of an issue, the evidence of a material witness, being uncorroborated, and being in other respects unsatisfactory, has been discredited by the judge, and the jury have given a verdict against the party producing that witness, this Court, upon being satisfied, by affidavits filed since the trial, that the evidence of the witness may be substantially corroborated, will grant a new trial. *Shields v. Boucher*, 1 De G. & S. 40.

DEPOSITIONS.

1. *Cross-cause*.—A cause and cross-cause were attached to the Vice-Chancellor's Court. After publication had passed in the original cause, but before it had passed in the cross-cause, the defendant obtained an order of course, at the Rolls, for liberty to use the original depositions "taken" in the cross-cause. *Held*, that it had not been irregularly obtained. *Sowdon v. Marriott*, 9 Beav. 416.

2. *Passing publication*.—Replication was filed in a cause in January, 1816, and a subpoena to rejoin issued in February, 1816. Since then nothing was done until April, 1847, when the Court refused to allow the plaintiff to withdraw the old replication and file a new one, after which the plaintiff examined witnesses: *Held*, that publication had not passed in the cause, and that the depositions were regular. *Thomas v. Lewis*, 35 L. O. 367.

ENLARGING PUBLICATION.

1. *Where depositions not seen*.—The Master enlarged publication, and on that occasion evidence was produced that the defendant had not seen the depositions. Immediately afterwards an application was made for an additional commission, which the Master granted without any further evidence that the defendant had not seen the depositions: *Held*, that it was not necessary to bring forward further proof, the Master having already in his office evidence of the fact, and the Court refused with costs an application to set aside the proceedings. *Clark v. Chuck*, 9 Beav. 414.

2. *Production of documents*.—After publication has passed under the 111th Order of May, 1845, the time may be enlarged by the Court if special grounds are shown, and if the defendant will not be prejudiced by the indulgence.

Semble, That it is not the usual practice to include a motion for the production of documents at the hearing, in an opposed motion for enlarging publication. *Wragg v. Wragg*, 34 L. O. 357.

EXAMINATION OF PARTIES.

The practice of allowing the parties, on the trial of an issue, to be examined for themselves is in the discretion of the Court, but to be resorted to with great caution, and never unless under the peculiar circumstances of the case justice could not be attained without it, and certainly never when, from the position of the parties, an unfair advantage would be given by it to one over the other. And therefore, where it appeared that the transaction to which the issue related had occurred in the presence only of the plaintiff and one other party, who, being a late partner of the defendants, was since dead, an order of the Court below directing that each party to the issue should be at liberty to be examined for himself, was reversed on appeal, as calculated to give the plaintiff an unfair advantage. *Parker v. Morrell*, 2 Phill. 453.

HEARSAY EVIDENCE.

See *Pedigree*.

JOINT RIGHT OF CO-PLAINTIFFS.

If several co-plaintiffs alleged by their bill that they are jointly, or in some joint character, entitled to the subject of the suit, and one or more of them would be so entitled if, in this respect, the others or other of them were not, (no issue being joined on the question of the title, if any, being joint,) it is not necessary for the plaintiffs, as between themselves, to prove in the cause as against the defendant, that their right, if any, is a joint right. *Blair v. Bromley*, 5 Hare, 554.

Cases cited in the judgment: *Ryan v. Anderson*, 3 Madd. 174.

LEGITIMACY.

Proof to establish adulterine bastardy.—*Admissibility of evidence*.—A child born of a married woman is, in the first instance, presumed to be legitimate. The presumption thus established by law is not to be rebutted by circumstances which only create doubt and suspicion, but it may be wholly removed by showing that the husband was, 1st, Incompetent; 2ndly, Entirely absent, so as to have no intercourse or communication of any kind with the mother; 3rdly, Entirely absent at the period during which the child must in the course of nature have been begotten; 4thly, Only present under circumstances as afford clear and satisfactory proof that there was no sexual intercourse. Such evidence as this puts an end to the question, and establishes the illegitimacy of the child of a married woman. It is, however, very difficult to conclude against the legitimacy in cases where there is no disability, and where some society or communica-

tion is continued between husband and wife during the time in question so as to have afforded opportunities of sexual intercourse; and in cases where such opportunities have occurred, and in which any one of two or more men may have been the father, whatever probabilities may exist, no evidence can be admitted to show that any man, other than the husband, may have been, or probably was, the father of the wife's child. Throughout the investigation the presumption in favour of the legitimacy is to have its weight and influence, and the evidence against it ought to be strong, distinct, satisfactory, and conclusive. *Hargrave v. Hargrave*, 9 Beav. 552.

PARTNER'S ACKNOWLEDGMENT.

After dissolution of partnership, whether binding on co-partners.—An answer put in by one of several partners, after dissolution of the partnership, containing an admission of a representation having been made by such partner in a partnership transaction, prior to the dissolution: *Held*, not to be admissible as evidence of such admission against his co-partners, on the ground that since the dissolution of the partnership the party, whose answer it was, had become bankrupt and obtained his certificate, and had therefore at the time of putting in the answer no common liability with the co-partners: *Held*, also, that even independently of that objection, such answer would not have been admissible in evidence, though made in the existing suit, without other evidence to identify the party whose answer it was with the partner. *Parker v. Morrell*, 2 Phill. 453.

PEDIGREE.

Principle upon which hearsay evidence is admissible.—*Quere*, whether the reasons and grounds upon which births and times of births, marriages, deaths, legitimacy, consanguinity, &c., are allowed to be proved by hearsay (from proper quarters) in a controversy merely genealogical, are not applicable to declarations made by a deceased person as to where his family came from, where he came from, or "of what place" his father was designated. *Shields v. Boucher*, 1 De G. & S. 40.

Cases cited in the judgment: *Whitelocke v. Baker*, 13 Ves. 514; *Hood v. Lady Beauchamp*, 3 Sim. 26; *Rishton v. Nesbitt*, 2 Mood. & Rob. 554; *Slaney v. Wade*, 1 M. & Cr. 338.

PRIVILEGED COMMUNICATION.

Upon settling interrogatories for the examination of a vendor in the Master's office, on a question of title between vendor and purchaser: *Held*, that the vendor was not compellable, at the instance of the purchaser, to state his motive for making a certain appointment, or to disclose confidential communications made by him to his solicitor and counsel respecting the property, although such communications were made merely on behalf of the consulting person singly, and were not made during a suit, during a dispute, or after the threat of a suit.

Quere, whether the client is compellable to

disclose any confidential communication between him and his solicitor or counsel, which his solicitor or counsel would be privileged in refusing to disclose?

Cases laid before counsel, on behalf of a client, stand upon the same footing as other professional communications from the client on the one hand to the counsel or solicitor on the other; and, as far as relates to any discovery by the counsel or solicitor, the question of the existence or non-existence of any suit, claim, or dispute, is immaterial. *Pearse v. Pearse*, 1 De G. & S. 12.

Cases cited in the judgment: *Stanhope v. Roberts*, 2 Atk. 214; *Richards v. Jackson*, 18 Ves. 472; *Attorney-General v. Berkeley*, 2 Jac. & W. 291; *Cromack v. Heathcote*, 2 Brod. & B. 4; *Herring v. Clobery*, 1 Phill. 91; *Knight v. Lord Waterford*, 2 Y. & C. 40, 41; *Hughes v. Biddulph*, 4 Russ. 190; *Nias v. Northern and Eastern Railway Company*, 3 Myl. & Cr. 355; *Holmes v. Baddeley*, 1 Phill. 476; *Combe v. The City of London*, 1 Y. & C., C. C. 631.

PRODUCTION OF DOCUMENTS.

1. *Root of title.*—The mere statement in an answer of the substance of a document, the contents of which the defendant is not bound to disclose, does not make him liable to produce the document itself.

The principal question in the cause was, whether a party who was equitably entitled for life to a long term of years with a general power of appointment over the residue of the term, had by a certain deed assigned the whole term to a party under whom the defendant claimed, or only her life interest. The plaintiff asserted that the deed had passed only the life interest. The defendant set forth a short abstract of the deed as showing the contrary. A motion for production of the deed was refused.

Production of a deed constituting the root of the plaintiff's alleged title, under the particular circumstances, refused. *Glover v. Hall*, 2 Phill. 484.

See *Latimer v. Neate*, 4 C. & F. 570.

2. *Tenant in tail.*—On a bill to enforce an arrangement respecting land entered into by the defendant's father in his life, the defendant stated, that "under a deed" of 1789, which was in the defendant's possession, his father was tenant for life, and that from 1789, his father had no greater estate than for his life. He also stated that he himself was tenant in tail "under" the same deed: *Held*, that the plaintiff was not entitled to a production. *Wasney v. Tempest*, 9 Beav. 407.

3. *Preliminary inquiries.*—An order was made directing preliminary inquiries, and for the production of the necessary papers. Subsequently, an order was made for an inspection of all papers in the defendant's possession at his solicitor's office. *Held*, that the latter did not supersede the former, and that the Master might still order a production in the course of the inquiries directed. *Whicker v. Hume*, 9 Beav. 418.

4. *Answer.*—A plea to the whole of the dis-

covery sought by a bill, except a portion of the interrogatory asking for the production of documents relating to the matters in the bill mentioned, shelters a defendant from giving a general discovery of documents asked for by the bill, and an answer having been filed together with the plea by way of denial to the portion excepted from the operation of the plea: *Held*, that such answer was sufficient. *Lehcup v. Tinling*, 35 L. O. 324.

And see *Enlarging Publication*, 2.

WITNESS.

Refusal to answer interrogatories.—*Motion to re-examine.*—On a motion, before publication, to re-examine a witness upon interrogatories which he has refused to answer, and that he may be ordered to produce a document which he refused to produce, the witness only, and not the parties in the cause, are to be served with notice of the motion; and the rule is the same where the motion is made after publication, unless the case comes within the grounds upon which the Court guards against the re-examination of witnesses. It is not an objection to such a motion that there was no

irregularity in the subpoena *duces tecum*, or that the required document was vaguely described in the subpoena, if the witness has appeared and submitted to be examined, and shown by his answer that he identified the document inquired after with the document in his possession.

A subpoena *duces tecum* is a requisition to a witness to produce a document; and an interrogatory requiring a witness to set forth a document in the words is in effect equivalent to a requisition to produce it.

The duty of a witness to produce a document called for by the subpoena *duces tecum*, or inquired after by an interrogatory, is the same whether the document is called for in order to be proved by himself or by another witness.

A witness cannot object to answer a question because it relates to private matters, or because it is immaterial, unless the answer may be withheld on some ground of privilege. *Tippins v. Coates*, 6 Hare, 16.

Case cited in the judgment: *Bradshaw v. Bradshaw*, 1 R. & Myl. 358; *Sandford v. Remington*, 2 Ves. jun. 189.

BUSINESS OF THE COURTS.

COMMON LAW SITTINGS.

Exchequer of Pleas.

After Trinity Term, 1848.

IN MIDDLESEX.

| | | |
|-----------|---------|---|
| Saturday | June 17 | Common Juries. |
| Monday | 19 | } Customs and Common Juries. |
| Tuesday | 20 | |
| Wednesday | 21 | } Exche and Common Juries. |
| Thursday | 22 | |
| Friday | 23 | } Common Juries. |
| Saturday | 24 | |
| Monday | 26 | } Special Juries and Common Juries, (if necessary.) |
| Tuesday | 27 | |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | |

IN LONDON.

| | | |
|-----------|--------|---|
| Saturday | July 1 | } Adjournment Day, Common Juries. |
| Monday | 3 | |
| Tuesday | 4 | } Common Juries. |
| Wednesday | 5 | |
| Thursday | 6 | |
| Friday | 7 | |
| Saturday | 8 | |
| Monday | 10 | } Special Juries and Common Juries, (if necessary.) |
| Tuesday | 11 | |
| Wednesday | 12 | |
| Thursday | 13 | |
| Friday | 14 | |

The Court will Sit at 10 o'clock.

Queen's Bench.

This Court will, on Saturday the 17th, Monday the 19th, Saturday the 24th, Monday the 26th, Tuesday the 27th, and Wednesday the 28th days of June, and on Saturday the 1st, and Wednesday the 12th days of July next, hold Sittings, and will proceed in disposing of the business in the New Trial Paper, Special Paper, and Crown Paper, and give judgment in cases previously argued.

By the Court.

Common Pleas.

This Court will, on Tuesday the 20th day of June, hold Sittings, and will proceed in disposing of the business now pending in the Paper of New Trials, on the same 20th, and on the 23rd, 24th, 26th, 27th, 28th and 29th days of the same month, and will also proceed to give judgment in certain of the matters that will then be standing over for the consideration of the Court.

THOS. WILDE.

Exchequer of Pleas.

This Court will hold Sittings on Wednesday, the 21st June and on every succeeding day (Sundays excepted) until and including Thursday, the 15th day of July next, and will at such Sittings, proceed in disposing of the business then pending in the Paper of New Trials, in the Paper of Special Cases and in the Paper of Demurrers, and in giving judgment in all matters then standing for judgment.

By the Court.

Read in open Court.

EDWD. BENNETT.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER EASTER TERM 1848.

Queen's Bench.

London.

| | | | |
|-------------------|---|---|----------------------------|
| D. Richardson | Mackay (Inj.) | Brooke | Tres. Baxendale and Co. |
| Capes and S. | Blackmore (Inj.) | Burton & ors., exors, &c. | Dt. Alban and B. |
| Keene | Dean (inj.) | S. J. Grace | Dt. Smith |
| Vincent and S. | Franklin & another (stay- ed) | S. J. Davis and others | Covt. Wm. Bevan |
| Lewis and S. | Brand (stayed) | Harper | Dt. Wilde and Co. |
| W. H. Green | Bond (Inj.) | S. J. Stanley | Prom. Few and Co. |
| Phillips | Hartley & another (stayed) | Manton | Van Sandau & Co. |
| Pearce and Co. | Robertson (stayed) | S. J. Dargan | Covt. Norris and Son |
| C. B. Wilson | Gibbs (stayed) | Aberdeen | Covt. Gilbert, Hook, & Co. |
| Jordeson | Cundell (stayed) | Harrison and others | Pro. Chester and Co. |
| Hughes, K. and M. | Berkley | De Veau, sued, &c. | Pro. Condell |
| Hook | Conyngham, Esq., and others | Macgregor (inj.) | Prom. Fenron and C. |
| William Batty | English | S. J. Hales | Trov. Wright and K. |
| Amory and Co. | Taylor, (P. O.) | S. J. Black | Prom. Ashurst and Sou |
| Gell and H. | Dickinson | S. J. Bradley | Prom. Sudlow and Co. |
| Warter | Sherlock and another | S. J. Browne | Pro. Campbell |
| G. Ashley | Pridmore | S. J. Ward | Pro. Elmslie and P. |
| Cox and S. | Roberts and another | S. J. Ridgway | Tro. Sharpe, F. and Co. |
| Same | Knight and others | S. J. Faith and another | Covt. Farquhar |
| Burrell and Son | Hooper | S. J. Smith | Pro. E. Smith |
| Pearson | The Queen | S. J. John Thomas | Indt. Hobler |
| Starling | Newman (Inj.) | Parry | Hughes, K., and M. |
| W. Tate | Gravatt | S. J. Lea | Pro. Elmslie and P. |
| Triston | The Queen | S. J. Harley | Consp. Walter and P. |
| Williamson and H. | Udall and another | S. J. Chodwick | Ca. Cox and S. |
| Smedley and R. | Taunton and another | S. J. Bevan | Pro. Gill |
| Tatham and Co. | Sadler and another | S. J. Cave and another | Covt. Walton |
| Tilson and Co. | Wilkins and another | S. J. Morrison | Pro. Bevan and G. |
| Fry and Co. | Roberts | Carson | Dt. Johnson and Co. |
| Cooper | Whitaker, jun. | S. J. Cockerell and others | Pro. Olverson and Co. |
| Tatham and Co. | M'Swiney | S. J. The Royal Exchange As- surance Company | Covt. Freshfield |
| Lacy and B. | Laurence and others | S. J. Hughes, Esq. | Dt. Williams and McL. |
| Pain and H. | Green and another, as- signees, &c. | S. J. Majoribanks and others | Tro. Westinacott and Co. |
| Geo. Holmer | Sirr | S. J. Sirr, Clk., admors., &c. | Dt. Maples and Co. |
| Walcot and Co. | Herapath | S. J. Boustead | Meggison and Co. |
| Bennett | The Grand Trunk, or Staffd. and Peterborough Union Railw. Co. | S. J. Harman | Dt. Richardson and Co. |
| Maples and Co. | Small and others | S. J. Nairne and another | Pro. Walton |
| Same | Same | S. J. Gibson, jun. | Pro. Same |
| Same | Same | S. J. Irving | Pro. Pearce and Co. |
| Few and Co. | Brett | S. J. Thomson | Pro. Thomas and M. |
| Maples and Co. | Gibson | S. J. Surtees | Dt. Stevens and G. |
| Lacy and B. | Bailey and another | S. J. Taylor | Pro. Philipps and N. |
| Bolding and P. | Baum | S. J. Ricketts and others | Pro. Lane and P. |
| Tate | Brown | S. J. Barwell | Pro. Amory and Co. |
| Shearman and P. | Jones and another | S. J. Hill | Pro. G. H. Smith |
| Amory and Co. | Taylor, (P. O. &c.) | S. J. Bradley | Pro. Sudlow and Co. |
| Dixon | Mariott | S. J. Baxter and others | Pro. In person |
| In person | Hornidge | S. J. Bedborough | Ca. Depree |
| Hudson | Shott | South Eastern Railway Co. | Pro. Tilleard and |
| Savage | Smythe | Low | Ca. Walton |
| Burrell and Son | Hooper | S. J. Cumberlege | Pro. Jaques and Co |
| Ed. Flower | Turner and 13 ors. | S. J. George Maule | Issue, Derby and I |
| Beavor and B. | George | S. J. Bedborough | Pro. Depree |
| Tilson and Co. | Wilkins and anr., extrix, and exor., &c. | S. J. Morrison, Resident Di- rector, &c. | Pro. Bevan and S. |
| J. S. Taylor | Shipley | S. J. Barber | Pro. Capes and S. |
| Wontner | Elliott | S. J. Topham and another | Tres. Holler |
| Wood | Wheeler | S. J. Ashton | Pro. Keightley and Co. |
| Lacy and B. | Bailey and another | S. J. Haines | Pro. Smith and W |
| Hook | Griffin | Hay | Dt. In person |
| R. and W. G. Roy | Walker | S. J. Satterthwaite | Pro. Vizard and Co. |
| W. Dixon | Jones and another | S. J. Lawrence | Pro. Wire and C. |
| Warry and R. | Jones | Lyne | Pro. Clarke and Co. |
| Tate | Gravatt | S. J. Ward | Pro. Elmslie and Cc. |

C. Ford

| | | | |
|-------------------|---|----------------------------|-------------------------|
| | Edwards & ors., assignees, &c. | S. J. Cooper | Ca. G. and C. Smith |
| Symes and Co. | Conolly | S. J. Morton | Ca. L. W. Williams. |
| Hughes, K. and M. | Mitchison | Millar | Pro. McLeod and S. |
| H. Ashley | The Queen | Savage | Indt. J. Billing |
| Maples and Co. | Great Western Rail. | S. J. Parker | Dt. Lepard and Co. |
| Tatham and Co. | Barker | S. J. Smyth | Pro. Rae and B. |
| Young, V. and G. | Dewing and another | S. J. Cox | Pro. Amory and Co. |
| Butler | The Queen | Worley | Indt. De Medina |
| G. Fry | Bunge | S. J. Stulpner and another | Pro. Burnell |
| Thrupp | Howes | Fuller | Pro. Galsworthy and Co. |
| Smart and B. | Clifton and another | Adcock | Dt. Gale |
| Lewis | Lewis | Noble | Pro. Collina and R. |
| Fyson and Co. | Mills | Lapham | Dt. Sharpe and Co. |
| Meggison and Co. | Binks | S. J. Morley | Dt. F. Blake |
| Same | Langhorne | S. J. Morley | Dt. Same |
| Amory and Co. | Taylor, (P. O.) | S. J. Miller | Pro. Miller and H. |
| Dale | The Queen | Brighton | Indt. Wakeling |
| Harbin and W. | Johnson | S. J. Bradley | Dt. Sudlows |
| Drew and S. | Allen and ors., executrix and executors, &c. | Goodchild | Pro. Lonsdale |
| Fitch | Joel | Clifton | Dt. Stevens and G. |
| R. and W. G. Roy. | Hardy, (P. O.) | Sanderson | Sci. Fa. Burn |
| Theobald | Collard and others | Dobree | Ca. Humphreys |
| Cox and S. | Knight and others | S. J. Thornton | Pro. Leigh |
| G. Ashley | Bower | Williams | Pro. Depree |
| Same | Isaac | Davis | Pro. Hodgson |
| Jervis | Vaile | S. J. Richter, secy., &c. | Pro. Dawes and Son |
| W. and E. Pyne | Webster | Raines | Pro. Emmet and K. |
| Maxon and W. | Armstrong | Parnell | Pro. Collins and R. |
| Horwood | Edgar | Beck | Pro. Reddell |
| Maples and Co. | Williams and others. | Toy | Pro. Gresham |

Common Pleas.

| | | | |
|-----------------------|----------------------|--|-------------------------|
| Lowless and Son | Mantzque | S. J. St. Katharine Dock Com- pany | Pro. Oliverson and Co. |
| Wire and Child | Tibaldi | S. J. Wanless | Ca. J. Taylor |
| Cattarns and Fry | Brown | S. J. Chapman | Prom. W. W. & R. Wren |
| Vallance and B. | Groom and others | S. J. Hutton | Trov. Linklaters |
| Wire and Child | Patterson and others | S. J. Chadwick | Prom. Keddell and Co. |
| C. W. & C. Lovell | Pinkus | S. J. London & Croydon Rail- way Co. | Ca. Burchell |
| Finch and S. | Williams | S. J. Maitland | Ca. G. Everill |
| J. & J. H. Linklaters | Hutton | Wiles | Trov. Howell |
| Same | Messer | S. J. Booth | Dt. Browning |
| Finch & S. | Williams | S. J. Betteridge | Ca. G. Everill |
| Cotterill | Navone | S. J. Haddon and another | Covt. Johnson F. and L. |
| J. D. Williams | Sharland | S. J. Liefchild | Prom. Bigg and Co. |
| Hoppe and Boyle | Gibson | S. J. Carter and another | Ca. Ellis |
| Cotterill | Moss and others | S. J. Smith and another | Prom. C. Walton |
| Same | Same | S. J. Foster | Prom. Same |
| Same | Same | S. J. Corporation of Royal Ex- change Assurance Co. | Covt. Freshfields |
| N. Bennett | Davidson | S. J. Bohn | Ca. Smith and Son. |
| Wilson and H. | The Elect. Tel. Com. | S. J. Nott and others | Ca. Wickens |
| Same | Same | S. J. Gamble and others | Ca. Same |
| Same | Same | S. J. D. P. Gamble and others | Ca. Same |
| Taylor and S. | Levy | S. J. Alexander | Prom. McLeod and S. |
| Adams | Rizzi | Foletti | Dt. Taylor |
| Hill and Heald | Miniaeff and another | S. J. Reade and another | Prom. Scott and Co. |
| S. Yates | Capua | Scott | Prom. Hutchinson |
| Oliverson and Co. | Hamilton | S. J. Cochran | Ca. Hill and Heald |
| Newbon and Evans | Thorn and another | S. J. Poynder and another | Ca. Dolman and Co. |
| Hook | Griffin and another | S. J. Hope | Dt. E. J. Rickards |
| R. Thompson | Johnson | Cooper | Prom. J. A. Jones |
| Lawfords | Lysaght and another | S. J. Bramwell | Prom. Paterson |
| Sutton and Co. | Camroux, Sec., &c. | S. J. Young | Covt. Coppock |
| F. West | Fitch | S. J. Martyr | Prom. Bristolow and T. |
| Hill and Heald | Draper | S. J. Paris | Prom. Wilkinson |
| Wire and Child | Maxey | Thomas | Dt. Sydney |
| Bell and Co. | Foster | S. J. Bainbridge and another | Prom. Oliverson and Co. |
| Oliverson and Co. | Adam | S. J. Freemantle, Bt., and others | Walford, Sol. Customs |
| E. Isaacs | Isaacs | S. J. Newman | Prom. Dean and Co. |

| | | | |
|-----------------------|------------------------------|---|------------------------------|
| Borradaile and Co. | Phillpotts | S. J. Wray | Prom. Fisher & De Jersey |
| J. Manning | Buxton | S. J. M'Gregor | Prom. Gregory and Co. |
| Lawrance and P. | Graham and others | S. J. | |
| Marten and Co. | Muggeridge and another | Cox and another | Dt. Richardson and T. |
| | other | S. J. Trier and others | Prom. Tatham and Co. |
| Cotterill | Salisbury | S. J. Murray and others | Prom. Sutton and Co. |
| Wilde, Reece, and Co. | Melville and others | S. J. Doidge | Covt. Hawkins and Co. |
| Druce and Sons | Klockmann | S. J. Hutchinson | Prom. Bell and Co. |
| Sutton and Co. | Stubbs and others, assigns. | Fuller | Prom. W. Murray |
| Geo. Smith | Simmons | S. J. London, Brighton, and South Coast Railway Company | Ca. Sutton and Co. |
| | | | Prom. Lloyd |
| Stroughill | Stroughill | S. J. M'Leod | Prom. Tilson and Co. |
| Cotterill | Gouin and others | S. J. Moore | Prom. Same |
| Same | Same | S. J. Shadbolt | Prom. Oliverson and Co. |
| Same | Warren and another | S. J. Peabody | Covt. Rogerson |
| N. Bennett | Downes | Hanson, Sec. &c. | Prom. G. R. Dodd |
| Hutchinson and B. | Adams | S. J. Froggatt | |
| Cotterill | Butler and others | S. J. The Corporatn. of the Roy. Exchange Assurance | Covt. Freshfields |
| | | | Prom. C. Walton |
| Same | Same | S. J. Fox | Prom. Pearce, Phillips & Co. |
| Same | Hambro and another | Gurney (chairman, &c.) | |
| | | | Prom. James |
| Stafford | Cox | James, Esq. | Prom. Oliverson and Co. |
| Maples and Co. | Welch | S. J. Thornton | Prom. Cotton and L. |
| Bird | Slark, jun., and anr. | S. J. Saunderson and others | Prom. Borradaile and Co. |
| Fisher and De Jersey | Wray | S. J. Phillpotts | Prom. Hook |
| G. Rutherford | Grissell and another | S. J. James | Ca. Oliverson and Co. |
| T. Parker | De Camera | S. J. Little | Ca. Hobler |
| Dimes | Thies | Munt | Trov. Rundall |
| C. Townshend | Green | Slack | |
| Serrell] | Serrell | S. J. Derbyshire, Staffordshire, and Worcestershire Railway | Prom. Lambert |
| | | | Dt. W. D. Kent |
| Sadgrove | Sadgrove | S. J. Kent | Ca. Parnell and T. |
| W. M. Batho | Osborn | Reeder | Prom. Lawfords |
| Oliverson and Co. | Smyth and others | S. J. Anderson | Dt. In person. |
| W. W. Wilkinson | Ilderton | Sill | Prom. Davies, Son, & Co. |
| Hodgson, C. and N. | Austin | Carmichael and others | Ca. Desborough and Y. |
| Minet and Smith | Ewbank | Nutting | Bridger and Blake |
| | | | Prom. Wright |
| Cooke | Cooke | Porter | Dt. M'Phail |
| Mardon and P. | Halliday | Wilson | Prom. Hill and Heald |
| Henderson | Palmer | Speanman | Dt. Cox and Williams |
| J. Espin | Watkins | Errington | |
| Goodwin and Co. | East Anglian Railway Company | Lee | Dt. H. Crocker |
| | | Evans | Dt. |
| Gray | Hartshorne, jun. | Rutter | Ca. J. B. May |
| Hutchinson and Boyd | Jones | Walter | Prom. Wire and Child |
| S. Oldknow | Monaghan | | |

Exchequer of Pleas.

| | | | |
|-------------------|----------------------|-------------------------|----------------------|
| Tatham | Mackintosh | Mitcheson | Pro. Sorrell |
| J. Bowen May | France | Evans | Pro. J. Bird |
| Same | Same | Same | Pro. Same |
| Crowder and M. | Enthoven and another | The Mines Royal Company | Pro. Thomas and Sons |
| | | | Pro. Simpson and Co. |
| Bolding and P. | Trinder | Chapman, admor., &c. | Pro. T. Lewis |
| E. J. Sydney | Pyke and another | Burgon | Ca. Fry |
| J. Moon | Wills | S. J. Bland and another | Dt. J. Bell |
| Miller and Carr | Miller and another | Atlee | Pro. Hall and Co. |
| McGregor | Watt | Edmundson | Pro. Holme and Co. |
| Milne and Co. | Ramsey and others | Harrison and another | Chester and Co. |
| | | | Pro. Sharpe and Co. |
| Same | Brownlow | Lowe | Tres. Jones |
| H. Jackson | Cross | Parker | Ca. Ruck |
| Grattan | Dean (pauper) | Nicholl and another | Dt. Bulton |
| De Medina | Mitchell | Clark | Dt. Evans |
| Jackson | Gomme | Braithwaite | Dt. H. H. Brown |
| Freeman | Watson, jun. | Brown and another | Pro. Ker |
| In person | Meggy | Laurie | Pro. Sprigg |
| Willoughby and J. | Truscott and another | Cartwright | |

| | | | |
|---------------------------|--|--|----------------------------------|
| Cox, Sons and Co. | Morris | Wilson | Tres. Wood and F. |
| A. Burn | Wheeler, venue charged to Middlesex, 1st Sitt. S. J. | Skaggs, admors., &c. | Pro. Thompson and D. |
| Hine and Co. | Daniels and another | Meek | Pro. Wright and Co. |
| Van Sandau and Co. | Whitman and another | Fergusson and others | Pro. Brown |
| Garry | Smith | Morescroft | Ca. Smith and W. |
| Fearley | Hodge | Pontifex | Pro. Pontifex and Co. |
| Silk | Curlewis | Magan | Pro. G. G. Reynell |
| Capes and S. | Black | Humphry | Pro. Pulcher |
| Bickley | Blackie | Fitzpatrick | Dt. Sowton |
| M'Leod and S. | Johnson S. J. | Crotts | Pro. Bell |
| J. J. Poddell | Brooker and another | Johns and another | Pro. C. Frost |
| Ruck | Boulcott and another | Challis and another | Ca. Burchell and Co. |
| Donne and T. | Murray S. J. | Bruyeres | Pro. Bicknell and B. |
| Same | Robinson S. J. | Same | Covt. Same |
| Same | Theed S. J. | Same | Covt. Same |
| Same | Banister S. J. | Same | Covt. Same |
| Crosby and C. | Harrison | Marsh | Pro. C. Browne |
| In person | Basham | Castell | Pro. Bickley |
| Shield and H. | W. Paxton | Frankis | Pro. Watson and Co. |
| Baylis and D. | Hebblewhite | Williams | Dt. Smith and Son |
| Phillipps and Son | Violet and others S. J. | Peer | Pro. Hornby and T. |
| Maples and Co. | Harrison | M'Donald | Pro. Ellis |
| Same | Gardner and another S. J. | Nutting | Pro. Same |
| Marton and Co. | Jackson and another S. J. | Chapman | Pro. Gatty and G. |
| Brady and Son | Foale | Caba | Dt. Adams [and Son |
| Oliverson and Co. | Dennistoun and ors. S. J. | Young and others | Dt. and Detinue, Druce |
| Tatham and Co. | Mowatt S. J. | Collett | Pro. Gordon and Son |
| S. Neul | Peacock S. J. | MacKenzie | Pro. Stevens and G. |
| Stevens and S. | Wilkinson and anr. S. J. | Hill and another | Pro. Blower and Co. |
| W. Murray | Anderson | Horton | Pro. Pocock and P. |
| Goddard and E. | Grapes S. J. | Burnoy | Ca. Gregory and Co. |
| John Mills | Hall | Coucher | Dt. Silvester |
| Norton and Son | Peenell and others S. J. | Page and another | Dt. Plucknett and Co. and Parker |
| Crowder and M. | Baly S. J. | Batard | Pro. Yates and T. |
| Tatham and Co. | Vanzeller | Crosey | Pro. Clark |
| Bolding and P. | Forbes | Hamilton | Dt. Cotterill |
| Same | Gandy | Hargrave and another | Dt. Finch and S. |
| Hill and M. | Mathews S. J. | Beavan | Dt. Gill |
| W. Braikenridge | Whittuck | Quantoek | Ca. Holme and Co. |
| Dawes and Sons | Nunn and others S. J. | Turpen | Pro. Wire & Co. |
| Miller and C. | Gill S. J. | Hill | Pro. G. and C. Smith |
| Teague | Birchall and another, assignees, &c. S. J. | Noad | Dt. Vallance |
| Donne and T. | Taylor | Purdy | Pro. Philp |
| Same | Sayers S. J. | London & South-Western Railway Company | Pro. Bircham and Co. |
| Wm. Ley | James P. Ley S. J. | F. P. Barlow | Pro. Edwards and R. |
| Same | Arthur Ley S. J. | Same | Pro. Same |
| G. and E. Hilleary | Taylor | Curtis | Ca. S. Smith |
| Symes and Co. | Doe dem. Pedley | Ferguson | Ejt. Davies and Co. |
| Fry and Co. | Patent Galvanised Iron Company S. J. | Santamaria | Pro. Crowder and M. |
| R. Meggy | W. Meggy | Swallow | Dt. Child and K. |
| Same | Same | Ward | Dt. Same |
| Simpson and Co. | Davies | King | Dt. Hames |
| Willoughby and J. | Knight | Campbell | Pro. Emmett and R. |
| Goddard and E. | Brown | Tempest | Pro. Van Sandau and Co. |
| Teague | Renter and others, assignees, &c. S. J. | Evans and another | T. Parker |
| Bowland and Co. | Davy and others | Hoason | Pro. Wilkinson |
| Bedford | Goldingham S. J. | Ward, Esq. | Pro. Elmslie and P. |
| Wadson and M. | Langlois, jun. S. J. | Reid, Bart., and others | Trov. Crowder and M. |
| Bolding and P. | Clarence | Metcalf and another | Pro. Hall |
| H. Lloyd | Nevill and others, assignees, &c. | Sherrard | Feigned Issue, Moore |
| Teague | Birchall and others, assignees, &c. S. J. | Noad | Ca. Vallance |
| G. Vincent | Thillon | Cooke | Dt. Bridges and B. |
| F. W. Denny | Wallbutton and another | Lenthall | Pro. In person |
| W. H. Garry | Kirkby | Williamson | Dt. J. Lewis |
| Hill and Heald | Walnut and others | Albers | Trov. Oliverson and Co. |
| Chisholme and Co. | Gardiner and another | Hewitt | Dt. Wire and Child |
| Same | Clay | Same | Dt. Same. |

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JUNE 24, 1848.

‘Quod magis ad nos
Pertinet, et nescire malum est, agitamus.’

HORAT.

CLOSE OF TRINITY TERM. BUSINESS OF THE COURTS. SITTINGS AFTER TERM.

THE Term immediately preceding the Long Vacation concluded on Friday the 17th instant, and it seems to be the universal opinion of all those with whom we have had an opportunity of communicating, that both in the Courts of Law and Equity there was a great deficiency of *new* business. The Courts were chiefly engaged in disposing of matters in arrear, and cases which had arisen in preceding Terms. From all we can learn, the Circuits are equally unpromising. The general stagnation of trade and commerce, and the prevailing indisposition amongst men of business to engage in anything—not merely of a speculative nature, but which necessarily requires any considerable pecuniary outlay—perhaps sufficiently accounts for the existence of a state of things, which the public at large, no less than the members of the legal profession, are deeply interested in wishing may not be of long duration.

There were many questions of practical importance brought before the Courts, the decision of which are of value, but we cannot say the bygone Term has furnished any *great* case to excite the attention of either the profession or the public. In the Common Law Courts, the proceedings of the County Courts, and the construction of the provisions of the act by which they have been established, gave rise to numerous applications, falsifying the predictions of those

who supposed that in actions for small amounts the jurisdiction of the Superior Courts was at an end.

The Equity Courts, after an interval of a week, resume their Sittings this day, and it has been announced that the Lord Chancellor and the other Equity judges will continue to sit until Thursday, the 10th August, when the Courts will finally adjourn for the Long Vacation. We presume, however, that this arrangement is conditional upon all or any of the Equity Courts having business ready to proceed with. An examination of the Cause Lists, as they at present stand, would rather lead to the conclusion that it is improbable all the equity judges can find Court business to occupy them much, if at all, beyond the close of the month of July.

All the Common Law Courts have been sitting in Banc since Term, under Lord Denman's Act, (2 Vict. c. 32). The Queen's Bench continues to sit up to the 28th June, and again on the 1st and 12th of July, the Common Pleas up to the 29th June, and the Exchequer has given notice for Sittings up to the 13th July. The attention of the Barons of the Exchequer was publicly directed to the inconvenience to which the Bar and the suitors would be subjected, by having Sittings in Banc at Westminster concurrently with the *Nisi Prius* Sittings after Term at Guildhall; but whilst admitting that some degree of inconvenience must accrue, the Barons notified that they felt themselves compelled, by a consideration of the state of business in that Court, to persist in the arrangement

previously announced. Indeed, from what I dropped from Baron Alderson, in reply to the suggestion that the leaders of the Bar could not be expected to abandon the management of jury causes at the Guildhall Sittings, it would seem to have been contemplated, and not deemed undesirable by the Court, that business should be more divided, and the arguments in Court more frequently entrusted to the junior members of the Bar. If any general understanding could be come to in this matter, we are far from insinuating that it might not be found as advantageous to the public as we have no doubt it would prove convenient to the judges; but whilst one suitor is fortunate enough to secure the advocacy of a leading member of the Bar, another will not be satisfied unless he has the advantage of a counsel of equal rank and standing. In this way able and effective juniors are passed over, and retainers heaped upon seniors, who, whatever may be the extent of their mental or physical energies, are incapable of realizing the Irish gentleman's notion of a bird, by being in two places at the same time. The consequence is, that when the case is called on, the leading counsel is not present, the attorney is mortified, the client indignant, and too often justice is not done! Whilst counsel continue to hold retainers in causes depending at the same time at Westminster and Guildhall, this result is inevitable.

Our observation as to the limited amount of business arising from new matters in Term, has been confirmed by an analysis of the Cause Lists for the Sittings at Nisi Prius after Term. A considerable proportion of the number of Nisi Prius causes standing for trial in all the Courts consists of remanets. In the Queen's Bench, the total number of causes entered for trial in Middlesex, is 269, and of these 173 are remanets. In the Common Pleas there were 102 causes standing for trial at the commencement of the Sitting, of which 42 were remanets; whilst in the Court of Exchequer the Cause List contained the names of 157 causes, but of this number only 60 were new causes, there being no less than 97 remanets.

The Cause Lists for the London Sittings are not yet sufficiently complete to enable us to state the number of new causes. A complete list of all those remaining for trial, at the end of Trinity Term, was published in our last number, (pp. 153 to 156). The adjournment-day in London is fixed in the Queen's Bench for Monday the 3rd of July, in the Common Pleas, for Friday, 30th June, and in the Exchequer, for Saturday, July 1.

COLONIAL JUDGES AND GOVERNORS.

THE position of those engaged in the administration of justice in our numerous and widely-spread Colonies is by no means satisfactory, and the consequences become daily more apparent. Not long since we saw the Chief Judge at Hong Kong suspended by the Governor, we presume without any just reason, because we find the Chief Justice restored to his situation, and sent back—it is to be feared—to lead a cat and dog life with the Governor by whom he was ignominiously displaced. Since then, as we gather from the proceedings in Parliament, one of the Judges of Van Diemen's Land has been cashiered by the Lieutenant-Governor of that Colony, under circumstances, to say the least, of an unusual character. The versions that have reached us of this transaction are extremely contradictory. The Under-Secretary for the Colonies stated in the House of Commons, that Mr. Justice Montague having been sued in the Court of which he was a judge for a debt, pleaded that he was not liable to be sued in that Court, and that the Governor and Council, upon investigation, found there was no real answer to the claim, and felt they had no alternative but to suspend the judge from his functions. Mr. Montague's friends, on the other hand, state, that the Lieutenant-Governor endeavoured to levy a certain fifteen per cent. duty, the legality of which impost was questioned in the Supreme Court, and that Mr. Montague and his brother justices determined against the legality of the tax sought to be imposed by the Colonial authorities, and by the conscientious discharge of their duty in this matter provoked the resentment of the governing head of the Colony, which was visited on the head of Mr. Justice Montague in the manner stated. We have no means, at this distance, of deciding between these conflicting statements. It is quite possible that both may be true to a considerable extent. Mr. Montague may have excited the enmity of the Governor, and may have conducted himself in such a manner, under the pressure of pecuniary embarrassments, as to have justified his sudden removal from office.

There is another Colonial case actually depending at this moment before the Privy Council, quite as singular in its circumstances as either of those to which we have adverted. It seems that Mr. Reddie, the Chief Justice of St. Lucia, did not live on the most harmonious terms with Colonel

Torrens, the late Governor of that island, and that certain libellous letters, reflecting on the Bishop of Barbadoes, having appeared in a Colonial newspaper, Colonel Torrens satisfied himself that the Chief Justice and the Attorney-General had concocted the libels in question, and having represented his convictions on this subject to the Colonial Department in England, was authorized to institute a formal inquiry, and, if the result turned out as the Governor expected, to suspend the Chief Justice. The investigation appears to have been conducted without any regard to the legal principles which govern the admission of evidence, either in civil or criminal cases, but the result was that the Governor's suspicions were confirmed, and the Chief Justice was removed. Affidavits were then transmitted to the Colonial Secretary from the editor and publisher of the newspaper in which the libellous paragraphs were printed, containing an explicit denial that the Chief Justice was the author, or in any way concerned in the publication of the alleged libels, and another inquiry was directed, in which the evidence is said not to have been taken upon oath, or with any of the ordinary formalities. The result, however, appears to have been to satisfy the present Governor that the decision come to by his predecessor was correct, and Mr. Reddie was removed from his office, and thereupon appealed to the Privy Council. The matter has been argued, and is now nearly ripe for judicial decision. We should not feel justified, therefore, in pronouncing any opinion upon the merits of the case, and it cannot be regarded as a deviation from the rule, if we express our earnest hope that Mr. Reddie may be enabled to satisfy the tribunal to which he has appealed, that an injustice has been done to him, and through him to the profession with which he is connected.^a

When instances like those we have enumerated are of frequent occurrence, we are induced to consider whether the system which produces such results must not be essentially defective. It is difficult to escape from the conclusion that the relations which exist between the individuals

invested with supreme authority in the Colonies and those engaged in the administration of the law are not happily adjusted, or that those entrusted with the appointment to judicial offices in the Colonies have evinced a culpable carelessness in the performance of a duty equally delicate and important. Perhaps the unseemly contests to which the public attention has been of late so often directed, are to be traced to the combined operation of both the causes pointed at, and not exclusively to either. The Governors of our Colonial possessions are, for the most part, military men, who regard prompt obedience as the first and highest of duties. Legal education and habits induce men to consider and examine before they obey. The one thinks himself called upon to maintain the supremacy of his personal authority—the other to uphold the supremacy of the law. Hence, if their sphere of duties is not clearly limited and defined, the danger of collision is imminent, and the harmonious working of the Colonial government is prevented. On the other hand, it is to be feared that, from family and political influence, persons have sometimes been appointed to judicial situations in our Colonies, who could not reasonably be expected to discharge the duties of office with credit to themselves or advantage to the community. A man who is known to be incompetent in his profession, or imprudent in the management of his private affairs, in the mother country, is not very likely to become an efficient judge or an exemplary member of society, when he is transferred to a distant Colony. The whole subject is well deserving the attention of those to whom the government of the Colonies is confided. Earl Grey, who is now at the head of that department, is understood to have more than hereditary claims to the character of a profound and able statesman; and we cannot conceive that he could render a more acceptable service to the Colonies—or indeed to the mother country—than by the placing the relations between Governors and Judicial Officers on an improved and satisfactory footing. The existing state of things in many of our Colonies is a serious impediment to the due administration of justice, whilst it is a reproach to our Colonial administration, and a subject of unfeigned regret to all who desire that British Law, and those engaged in its administration, should continue to be held in respect.

^a - The recent accounts of the misappropriation of a large sum of money, the property of the suitors, by officers connected with the Supreme Court at Calcutta, although it does not fall precisely within the scope of our present observations, cannot fail to be considered as a matter of grave importance in connexion with the administration of justice in the Colonies.

UNION OF LAW SOCIETIES.

"CENSURE is the tax a man pays for being eminent," and the tax is equally levied on collective bodies as on individuals. The wisest government, whether of a nation or of a society, large or small, is sure to be visited with a certain share of discontent. Some blame from ignorance, some from envy and jealousy, others for the defects they have in exercising the privilege of grumbling, and no small number because whatever is not done by themselves in their estimation cannot possibly be right.

Amongst which of these classes we are to rank the Editor of the Law Times, we will leave him to determine. We think he is suffering some injudicious person to write editorial articles, or is himself misguided by false intelligence of what is passing in the profession. One would presuppose that a journal, whether self-constituted as the organ of either branch of the profession, or really representing the one or the other, would pay due respect to the societies which had been formed by the labour and at the expense of a large number of members who may be presumed to know something of their own state and condition,—of their wants,—of the evils they seek to remove,—and the advantages they desire to obtain. Not so! The attorneys (according to this authority) never did, nor could do, anything for themselves. This legion of ten thousand had no leaders, no plan of action, no end or purpose, or at least none that they could discern, of had the remotest chance of attaining. Happily five years ago a very talented gentleman was called to the Bar, and a weekly magazine was started on a plan and on principles never before thought of, and the progress which has been made within a few short years seems perfectly astounding! Local Courts, which had been successfully opposed for 15 years, were established throughout the land! Barristers of five years' standing were appointed to preside over them, in preference to and to the exclusion of Attorneys, whether of ten or twenty years' practice. They, who had been Commissioners of Bankruptcy, Assessors in the Sheriffs' and various other Courts, and Advocates before numerous Tribunals, were expressly excluded from ever presiding again, and made dependent on the will and pleasure of the new judges for permission to speak on a question of 40s.! There has been a great deal said from time to time by the learned gentleman about the good of the profession,

but this is an instance of what has been done. It was just after this sweeping measure of law reform in 1846, that the Metropolitan and Provincial Law Association was projected.

Though constantly urging the profession to unite, especially in the provinces, our contemporary rarely publishes a number without censuring some of the proceedings which are adopted by one or other of the law societies. All that has been done in London, or in Manchester or Liverpool, or elsewhere, regarding the Repeal of the Certificate Duty, he sets at naught. It was not done at the right time, nor in the proper way. The parties presumed to think and act for themselves, and consequently went wrong!

It is again asserted in the journal we refer to, that the Incorporated Law Society disregards the interests of the profession in general, and attends only to the ease and advantage of its leading members in the Metropolis. Such and similar misrepresentations have formed the subject of many leading articles by a writer who affects to patronize the attorneys,—assuming that they are unable to manage their own affairs, and that it is only since his advent into the legal world that any good has been effected. It is scarcely worth while to examine into the grounds of these pretensions, but, to show the opinions entertained by the profession in general, we shall extract a few passages from the recent Report at the Annual General Meeting of "The Metropolitan and Provincial Law Association," regarding the important aid rendered by the Incorporated Law Society to that union of town and country solicitors, for which we have constantly contended. The Committee remark—

"That although there exists abundant reason for watchfulness and exertion, there is, in their opinion, no ground for despondency. If the interests of the profession have been assailed from without, they rejoice to know that the practice of solicitors in late years has been of a very improved character; and it is but just to add, that this improvement in a great degree must be attributed to the establishment and operations of the Incorporated and the various Provincial Law Societies, and to the facilities now afforded by means of these societies for frequent and friendly communication. The members of the Association will not expect that evils of many years' growth are to be eradicated at once. It is an important fact, and a satisfactory sign, that the great majority of solicitors are at length prepared to look steadily at the difficulties and anomalies of their position, and to unite together for their remedy; and the

hope of success arises mainly from the consideration that the Committee believe that their claims are just, that those claims will be urged in no selfish, mercenary, or unbecoming spirit, and that in whatever is attempted the members of the Association will be actuated by a sense of duty to themselves, doubtless, but to their clients also, and to the community of which they are members, and whose interests upon an extended view of the subject they believe to be identical with their own.

"Whilst the committee enforce the policy of increasing the number of Provincial Law Societies and enlarging the numbers of this Association;—whilst the collection and communication of information on the state and interest of the suitors as connected with the due administration of justice, should constantly engage their attention, with the view of preparing materials for an appeal to the Legislature and of evidence to support it,—they feel that two other objects have peculiarly strong claims on the attention of the profession and the public. These are the *education* of persons intending to become solicitors and the *superintendence* of the profession. The Committee conceive that an improved system of Professional Education forms the true basis for the honour and usefulness of the profession, and the maintenance of an effective supervision over it affords to the public the best security against the abuse of professional power and privileges.

"But as both of these objects have received and continue to engage the careful attention of the *Incorporated Law Society* (a body entrusted both with the Examination and Registration of Attorneys and Solicitors, and being armed with chartered rights and powerful influence, possess the best means of effectually promoting them), the Committee of Management conceive that this Association will contribute more to advance those great objects, by a *steady and cordial support of the exertions of the Incorporated Law Society*, and by suggesting improvements to them from time to time, than by any separate course of action at present with regard to them.

"The Committee deem it no more than an act of justice to express their sense of the invaluable services which have been rendered both by the Council of the Incorporated Law Society, and by a large number of its members, in the establishment of this Association. It has been through the friendly aid and sanction of the Incorporated Society collectively, and of many of its members individually, that the Association has been enabled to surmount some of the chief difficulties which always attend the organization of an extensive body, and to establish itself on a permanent footing.

"To the same liberal spirit the Committee of Management are indebted for the invaluable aid which, up to this period of their labours, the Incorporated Law Society has allowed them to receive from their able and indefatigable Honorary Secretary. In reliance on this spirit, the Committee of Management, in the early part of the year, ventured to request the

Council of the Incorporated Law Society to allow the continuance, for some further time, of their Secretary's services, and the Council kindly consented to those services being extended up to the present Annual Meeting of the Association."

Meanwhile it seems that the Incorporated Law Society is not idly reposing under its well-earned laurels, but is constantly co-operating with other professional associations, for we find it stated in the Annual Report of the 30th May, that—

"The Council have continued to keep up their communications with the several Provincial Law Societies, not only in England and Wales, but in Ireland and Scotland, relating to the proceedings adopted for the benefit and improvement of the profession.

"The members," they observe, "are aware by the report of last year, that the new Association of Metropolitan and Provincial Solicitors (which was formed soon after the passing of the County Courts Act) sought the assistance of this Society in their intended measures for supporting the just claims of attorneys and solicitors, and for promoting the improvement of that branch of the profession.

"The Council have been from time to time in communication with that eminently useful society, and have rendered them such assistance as appeared to the Council consistent with the design and objects of this Society's Charter.

"It appears that there are several important objects of usefulness to the profession which may be pursued by the two societies in common, and others which will receive the attention of each society *separately*, and be followed out by their own independent means; and in aid of such objects the Council will be always ready to co-operate.

"From the exertions of both, and their occasional co-operation, the most beneficial results to the profession may fairly be anticipated."

They add, that "it is gratifying to observe that a considerable increase has taken place in the number of Solicitors returned as Members of Parliament, all of whom have shown a marked attention to the true interests of their brethren."

Our contemporary has thrown no small quantity of cold water on the new association, and indeed altogether impugned the main principle of its First Address to the profession, namely, that the attorneys and solicitors, within the memory of many living practitioners, had been degraded. He, on the contrary, asserted that their condition was much more elevated than formerly, and he has repeatedly contended that they need no new association in London, except a club for country solicitors, and fraternity in certain Insurance, Reversionary, and Book Societies, of the merits of which undertakings we may hereafter have occasion to speak.

ATTORNEYS' CERTIFICATE TAX.

Lord *Robert Grosvenor* has given notice of a motion for leave to bring in a Bill to Repeal the Duty on Attorneys' Certificates, on *Tuesday* the 16th *July*. This, no doubt, is the earliest day that the state of the business before parliament will permit.

The friends of the measure will, of course, be kept in remembrance as the time approaches; and the solicitors in the country will not fail to communicate with their representatives in town, and secure their attendance.

We think the short discussion which took place on the 5th instant had a useful effect, for besides calling attention to the subject, and showing that eminent members of the House were interested in the measure, it produced as clear an admission of the justice of the claim as could then be expected; and we trust that a more distinct recognition of the principle will be obtained on the next occasion.

A very sanguine supporter of the repeal has calculated that it will take five years (a favourite period with him) to effect the object. At that pace we may congratulate our friends on the great progress which the small end of the wedge has already made in the present Session.

TAXATION OF COSTS.

A QUESTION of very considerable importance with reference to the construction of the 6 & 7 Vict. c. 73, was determined by the Court of Common Pleas during the last Term, which does not at present appear to have attracted the notice of the reporters, and which cannot, we think, be too soon or too extensively known in the profession. Most of our readers are aware, that when a bill of costs is referred to a Taxing Master in equity for taxation, his report is open to exception, as well on questions of principle as of amount, the usual course being for any party who may be dissatisfied with the taxation to present a petition to the judge who made the reference, praying for a review.

It frequently happens that questions of retainer arise, which must be settled before the liability can be determined, and these are sometimes disposed of by the Court and sometimes left to the Master, either by direction of the Court, with or without the consent of the parties, or by consent of the parties after the matter has come before the Master. In all these cases, however, it has always hitherto been considered, that the

Master's judgment is open to review, and that it might be objected to in the manner above described. Such is the practice in equity, but at law a different practice prevails, it having been held in the case of *Aftalo v. Phillipps*,* that if parties after an order of reference for taxation has been obtained, without prejudice to the question of retainer, verbally agree that the Master shall determine that question, he must be considered in the light of an arbitrator, and his certificate as an award, and therefore conclusive, without any power of appeal. The Court also, in the same case held, that under the 43rd section of the above act they could order judgment in such a case to be immediately entered up for the amount found to be due by the Master's certificate.

NOTICES OF NEW BOOKS.

A Hand-Book of the Practice of the Court of Chancery, adapted to the Orders of the 8th May, 1845, and the Decisions thereon. By JOHN SIDNEY SMITH, Esq., Barrister-at-Law. London: W. Benning & Co., 1848. Pp. 673.

It is one of the misfortunes of legal authors, in these days, that no sooner have they completed a valuable treatise, than forth come divers new Statutes or Rules of Court, repealing or materially altering the Law or Practice, and rendering much that has been carefully written worse than useless. Where the alterations are not very numerous, they may be supplied by way of supplement, but where the changes are extensive and numerous, this is a very difficult and unsatisfactory course; and it frequently occurs that another author, availing himself of this state of things, brings out a rival work with the newest alterations. He, however, in turn, undergoes the like vicissitude; and the profession is subjected to endless expense and inconvenience.

Mr. Sidney Smith, the author of an elaborate treatise, in two volumes, on the practice of the Court of Chancery, has been placed in the condition we have just described. A few months before the General Orders of May, 1845, Mr. Smith had published a third edition of his Practice. There had been much talk of those expected orders, but they were so long postponed that the learned author ventured to publish his work without more delay. When the orders made their appearance he issued a *Supplement*, but it seems that the changes were so extensive that the supplement has been deemed insufficient for professional

purposes. The author consequently reconsidered the subject, and determined to give in a compressed form so much of his larger treatise as related exclusively to the Practice of the Court, as *modified by the New Orders*, and including therein the Decisions on their Construction.

This has been accordingly done in the work before us, and Mr. Smith thus states his objects: viz., to communicate to the practitioner:—

1. The existing Practice of the Court of Chancery from the commencement of a Suit to the Decree. 2. The several kinds of bills which may be filed. 3. What interlocutory applications may be made, and the manner in which they are presented to the Court. 4. The nature of the proceedings in the Masters' Offices, and the mode in which they are conducted. 5. The most useful forms of pleading. The Collection of Decisions are important, being brought down to the last Term. The work is well arranged, and appears to us to have been carefully compiled, and to be well adapted to render service both to the practitioner and the student.

INCORPORATED LAW SOCIETY.

MR. WARREN'S LAST LECTURE.

MR. WARREN began by stating, that as Monday fortnight was his first, so that evening would be his last appearance anywhere as a public lecturer; and he felt oppressed by the consciousness that so much remained to be said, which time would not admit of his saying that evening; and that he had prepared ample materials to be delivered, which, nevertheless, he should be obliged to condense into mere suggestions; but those were on matters of great practical moment and no little delicacy. He first congratulated the gentlemen who had passed their examination on the preceding Tuesday, and feelingly and pithily condoled with those who had been rejected, entreating them "not to be disheartened, but 'out of the nettle danger to pluck the flower safety';" so that their first reverse might prevent a life of reverses." These words elicited a strong expression from the audience of sympathy and approbation.

The learned gentleman then proceeded to insist strenuously on the young attorney continuing a *student*; entreating him to reflect on the opportunities which might suddenly present themselves to him, but which, if he were unprepared, would flit past him to one who *was*! He gave a striking illustration of this remark in a case which had, some years before, come under

his notice. He recommended the young attorney to map out to himself the entire field of the law, so that he might acquire a constantly increasing familiarity with every part of it, which was absolutely necessary, for he was liable to be summoned at a moment's notice, by any casual client's exigencies, to any part of that field. He recommended, "as a *basis* of operations," Mr. Chitty's "Analytical Table of Rights, Injuries, and Remedies," prefixed to the first volume of his General Practice; and gave some highly important and practically useful suggestions for working out this idea. He advised the young practitioner to familiarize himself with those portions of law which were apt to be most *suddenly* called into action, *e. g.*, respecting wills, distresses, liens, stoppage in transitu, breaches of the peace, the law of arrest, &c.; and to make a point of mastering important statutes the moment that they came out; for he might be required to use that knowledge suddenly and immediately, by some one affected by their provisions. Reverting to the office of Coroner, he expressed a strong conviction that attorneys were much better qualified for it than medical men; but urged the necessity of early studying the leading rules of evidence and criminal law, and acquiring general notions of forensic medicine. He advised attorneys and solicitors to become intimately acquainted with Municipal Corporation Law, Election Law, and Constitutional Law; this latter being, in the present critical times, a matter of immense importance, if lawyers would retain their great influence over society, and qualify themselves to distinguish between reform and revolution—reparation and disorganization. In recommending Mr. Hallam's "Constitutional Law," Mr. W. took occasion to boast that that eminent writer was a member of the legal profession, and in his, Mr. Warren's, department of it; while the other department could rejoice in numbering among its members that distinguished historian, Mr. Sharon Turner, who was a practising attorney down to the day of his death. Bishop Warburton had also, said Mr. W., served out his entire articles in an attorney's office, before entering into the Church which he so splendidly served and adorned. Mr. Warren proceeded to repel the notion that law and letters were incompatible, and cited many instances to refute the "calumny," referring to that accomplished scholar and learned lawyer the late Mr. John Wm. Smith, and declaring that, to his own knowledge, many of the profoundest lawyers

living, from Lord Lyndhurst downwards, were also the brightest scholars, and most ardently attached to elegant literature.

Mr. W. then gave some grave cautions on the subject of *partnerships*, fortifying his positions by some striking and apt quotations from two judgments of Lord Eldon. Mr. W. said, that it was "mighty easy to rush into this relation, but not quite so easy to escape from it, however intolerable, alarming, and dangerous its continuance might have become." He recommended a gentleman just out of his articles to become a *manager* or *managing clerk* for a few years, if he had the power of doing so, unless he had some specially advantageous opportunity of establishing himself in business, either alone or as a partner. This would serve to enlarge and improve his knowledge and habits of business, and accustom him gradually to a sense of responsibility, besides enabling him to economize his pecuniary resources, and place himself in the way of *opportunities* of which he might be able honourably to avail himself. He cautioned a young man earnestly against relying on supposed "connection"—which however confidently promised, and brilliant-looking in the distance, "too often on being approached melted into the mist of disappointment!"

The remainder of the Lecture was devoted to a series of practical suggestions for the conduct of professional business and the guidance of the practitioner, in the discharge of critical moral duties;—all of which were listened to with that deep attention, which manifestly was excited by a sense of the importance of what was being uttered. Every sentence teemed with significance, affording matter for instructive suggestion afterwards. We cannot pretend to do more here, consistently with our limits, and in justice to the learned gentleman who is, we understand, already at press with the Lectures,—than barely intimate the general scope of his concluding observations.

He said, that the great object of the honourable practitioner was first to *avoid* litigation; but if it were inevitable, to conduct it like a gentleman—as resolutely as might be, but still with courtesy, temper, and liberality—ever remembering that the object in view was to obtain *justice*, and that by fair and honourable means.—"Begin nothing of which you have not well considered the end," said Mr. W.: "don't rush into litigation without counting the cost, taking a thorough and comprehensive view of your client's interests and resources, and carrying

your eye forward to the ultimate stage—when you may see your client sullenly grumbling at your bill of costs!"—Mr. Warren proceeded to take a rapid view of the stages of a cause, pointing out, as he went on, the shoals and sunken rocks which lay in the way of an inexperienced or hasty practitioner, and giving practical suggestions for avoiding them.

On two topics he dwelt with peculiar force,—the one was, the guardianship over his client's *conscience*, which was possessed by the attorney and solicitor, with reference to swearing affidavits, answers in Chancery, &c., in matters affecting the client's own interest; and Mr. W. laid it down as a cardinal rule, that the attorney and solicitor "ought to extract from his client all that he really knew and believed on the subject in dispute, *before letting him see* in which direction his *interest* lay." The other topic was, the great responsibility resting on attorneys and solicitors with reference to *wills*; ascertaining a testator's competency; giving him honest advice; and carrying into effect a testator's instructions effectually. Mr. W. mentioned here a noble instance of an attorney who generously gave up a large legacy (40,000*l.*) unexpectedly left him by a client who had quarrelled with his daughter, to settle it on that daughter and children. This interesting anecdote elicited loud applause.

Mr. W. dwelt on the "*uberrima fides*" required by the courts to be exhibited by attorneys and solicitors in relation to the property of their clients: on the sacred obligation resting on them to have all their professional affairs always in such a satisfactory position as to prevent accident, sudden illness, or death, if it overtook them, deranging and compromising the interests which had been entrusted to them. He urged scrupulous honour in paying counsel's fees, which were a *debt of honour*, and one, therefore, among gentlemen, and of unquestionable obligation. An attorney and solicitor should eschew *speculation*, as ruinous to his own reputation and character, and the interests of his client. "Who would knowingly entrust property to a speculating attorney, any more than to a speculating banker?"

After some other interesting and useful recommendations of this kind, Mr. Warren proceeded, in conclusion, to entreat his hearers never to slip into the derogatory habit of calling their department "the *humbler* branch," "the *inferior* walk," of the profession. Which was superior, and which inferior, was a question fit to be dis-

cussed between only the weaker members of both. Mr. W. congratulated the profession in possessing the Institution, in the Hall of which he was speaking; and on the steps now taking to organize a complete and effectual union of all members of the profession in town and country—a movement which he hailed as likely to conduce greatly to the benefit of the profession. After again adverting to the oath which every attorney and solicitor was required to swear before commencing practice, and passing a just but temperate compliment to the at-

torneys and solicitors of the United Kingdom, as a body distinguished for integrity, honour and ability, Mr. Warren concluded, with much animation, by expressing a hope “that they, in their turn, had no reason to be ashamed of his brethren of the Bar of Great Britain, of which he was proud to be a humble member;” and with these expressions, continued Mr. Warren, “of cordial, but independent respect, of mutual regard and good understanding, and of true brotherhood, I now, gentlemen, bid you all farewell.”

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Halls Court.

Wyllie v. Ellice. April 15, and May 29, 1848.

SECURITY FOR COSTS.—DEMURRER.—AMENDMENT.

An order for the plaintiff to give security for costs may be obtained, as of course, upon a statement showing that he is out of the jurisdiction, introduced by amendment after a demurrer allowed, although the defendant, knowing the plaintiff to be out of the jurisdiction, has previously permitted him to proceed in the cause without requiring security.

THIS was a motion to discharge an order obtained as of course, by which the plaintiff was required to give security for costs under the following circumstances:—The bill had been amended after answer; a demurrer had been allowed to the amended bill, and leave given to amend afresh. The order to give security was made upon a statement of the plaintiff's residence, contained in the bill as amended. But the plaintiff was out of the jurisdiction at the time when the original bill was filed, and this circumstance was well known to the defendant who had obtained the present order, as appeared from his having given notice in July, 1847, soon after the filing of that bill, of a motion to compel the plaintiff to give security for costs, which, however, he had afterwards abandoned, and on the 26th of July put in his answer to the bill, which led to the first amendment.

Mr. Turner and Mr. Morris, for the motion, contended that the order was irregular because obtained as of course after answer, without having mentioned the fact of an answer having been filed; and that the defendant having taken proceedings after he was aware that the plaintiff was out of the jurisdiction, had precluded himself from obtaining such an order, because he had brought the additional expense upon himself. *Mason v. Gardiner*, 4 Bro. C. C. 436.

Mr. Teed and Mr. Brett, in support of the order, argued that the demurrer having put the bill out of Court, the amended bill was in fact a new bill; and the order to give security for costs therefore of course, since it was ob-

tained upon the allegations of the plaintiff himself. In support of this position they relied upon the form of the order, which was, that security should be given before the defendant should be obliged to demur or answer, and not an order to stay all proceedings until security should be given, which would have been the case of an order to give security made in the progress of the cause. They stated also, that in December last the plaintiff had been in this country, and had since gone abroad again; a fact which made the proceedings previously to December immaterial to the present argument. They cited *Hooper v. Parer*, 6 Beav. 173.

Lord Langdale, after briefly stating the facts of the case, said, that the order was objected to as irregular on three grounds,—1st, because it was obtained as of course after answer; 2ndly, because no mention had been made of any answer being on the file when it was applied for; and 3rdly, because the defendant had allowed the plaintiff to proceed with the cause after he knew of his being out of the jurisdiction. No doubt a defendant who knew that the plaintiff was residing abroad at the time when the bill was filed, if he did not then apply for security for costs, was bound to show some reason for asking for it afterwards. But he did not think this rule applicable to a case where a plaintiff subsequently described himself, as he considered the plaintiff bound to do on amending his bill, if such was the fact, as being out of the jurisdiction. With regard to the effect of the demurrer, its allowance showed that the plaintiff was not entitled to relief in the then state of the record; and though the bill could not strictly be said to be out of Court, when the Court, by giving leave to amend, had expressed an opinion that it was possible the plaintiff might be entitled to relief, yet the allowance of the demurrer, with leave to amend, must be considered as putting the defendant into a new course of litigation, in which a new description given by the plaintiff would entitle him to require security for costs. With regard to no reference being made to the answer to the old bill, he thought this immaterial under the altered state of the case; and no negligence had been shown since the bill was amended. He should refuse the motion with costs.

Vice-Chancellor of England.

Jones v. Lord Charlemont. May 4, 1848.

DISMISSAL OF BILL.—ORDER OF 13TH APRIL, 1847.

Where the common order to amend a bill is obtained, but not served until the defendant has served a notice of motion to dismiss for want of prosecution: Held, that the order to amend was of no effect, and the defendant entitled to dismiss with costs.

IN this case plaintiff obtained the common order to amend on the 4th of April. On the 17th of April defendant served a notice to dismiss for want of prosecution, and on the 18th plaintiff served the order to amend obtained on the 4th. The question was, whether this was a good service, and within the General Order of 13th April, 1847, which provides, that "plaintiff is not to obtain an order of course to amend his bill after a defendant (being entitled to move) has served a notice of motion to dismiss the bill for want of prosecution."

Mr. Shapter, for the motion to dismiss, contended, that the order of April did not apply to the case, that order related only to the *servng* an order to amend, and not to the present case, where the order was *obtained* but not *served*. The old practice therefore applied under which the order to amend was treated as a nullity. *Anonymous case*, 7 Ves. 222; *Morris v. Owen*, 1 Ves. & B. 523.

Mr. C. C. Berkeley, *contra*.

The Vice-Chancellor said, he was of opinion that the defendant was entitled to dismiss the bill for want of prosecution, with costs, but the plaintiff might, if he thought proper, file a replication.

Jones v. Morgan. April 18, 1847.

DISMISSAL OF BILL.

Where a motion is made by one of several defendants for dismissal of the bill as against him, it is not a sufficient defence to the motion for plaintiff to aver that the delay is occasioned by difficulties in drawing up an order made with respect to other defendants.

ON the 14th February, 1846, the answer of Cowper, one of the defendants to the suit, was filed, since which time nothing had been done, and Cowper now moved to dismiss for want of prosecution. An affidavit was filed in opposition to the motion, stating that some other of the defendants had demurred to the bill, that the demurrer had been overruled by the Vice-Chancellor, but that it had been carried before the Lord Chancellor on appeal, and that in December, 1846, a written judgment was obtained from the registrars, but owing to some difficulties in settling the minutes, the order had not been drawn up.

Mr. James, for the motion, contended that this was no answer to the motion; because disputes were going on between the plaintiff and other defendants, that was no reason why his client should be kept before the Court.

Mr. Willcock, *contra*.

The Vice-Chancellor made the order dismissing the bill as against the defendant Cowper.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Ex parte Clarke, In re Tring, Reading, and Basingstoke Railway. Thursday, May 4, 1848.

PROOF ON DEPOSIT BY SCRIP-HOLDER.

A scrip-holder in the company, who had paid his deposit, but who had not executed the subscribers' agreement, through the fault, as he alleged, but did not satisfactorily prove, of the company, was refused permission to prove for the amount of his deposit against the estate of the company, which had become bankrupt.

THE petition was presented by the assignees, praying that a proof of Mr. Underwood against the estate, which had been allowed by the Commissioner, might be expunged; for a stay of the dividend warrant; and that the petitioner's costs might be paid out of the estate. On the 3rd of October, 1846, a fiat was issued against the Tring, Reading, and Basingstoke Railway Company, and on the 6th of October it was adjudged bankrupt, and assignees were chosen. On the 22nd of Feb., 1848, Mr. Underwood tendered before Mr. Commissioner Shepherd a proof for 52*l.* 10*s.* "for money had and received by the company to his use, for which he had not, nor had any person by his order or to his knowledge or belief, for his use, received any security or satisfaction." This claim was opposed by the assignees, and Mr. Underwood being examined before the Commissioner, deposed that he claimed the money, which had been paid on the 9th of October, 1845, as a deposit on shares allotted to him by the company; that he subsequently applied to sign the deed, and was told that the secretary was not at home; that he wrote to the secretary a letter stating that he wanted the shares; that he again applied at the office of the company about three weeks after the said 9th of October, about two o'clock; and that he applied two or three times on subsequent days between the hours of two and three o'clock, but was told that the deed was in the House of Commons, or that the party who ought to be in attendance was at the West End. The letter of allotment, dated the 30th of September, 1845, stated, that the deposit must be paid on or before the 9th of October then next, to one of the bankers therein mentioned, who would give a receipt for the same as so much money received on account of the company, which receipt would have to be exchanged for scrip certificates on the subscribers' agreement and parliamentary contract being signed; the letter also stated, that the parliamentary contract and the subscribers' agreement must be executed within a month from the transmission of the letter of allotment. The scrip certificates stated as follows:—"The holders of this scrip

having paid the deposit of 5*l.* 5*s.* per share, and executed the subscribers' agreement and the parliamentary contract, is entitled to — shares in this undertaking." In opposition to the claim, the secretary and solicitor of the company deposed, that proper persons were in attendance at the time referred to, to enable persons to sign the parliamentary contract, and that the deed was not at the House of Commons at the time alluded to by the claimant, and that no scrip had been refused to any person. The claim was adjourned for the production of further evidence, and on the 30th March 1848, at a meeting held before Mr. Commissioner Fonblanque, (acting for Mr. Commissioner Shepherd,) the affidavit of C. E. Roberts, confirming Mr. Underwood's account, was produced. Mr. Commissioner Fonblanque allowed the claim; and this petition was accordingly presented. It appeared that the subscribers' agreement contained a covenant, that in the event of the act not being passed, each of the subscribers would pay rateably the expenses incurred: these expenses amounted to 19,342*l.* 3*s.* 1*d.* At the hearing of this petition an affidavit of Mr. Underwood was produced, stating that there had been gross mismanagement of the affairs of the company, of which several instances were given.

Mr. Russell and Mr. Willes supported the petition.

Mr. Terrell and Mr. Logie appeared for the respondent.

The following cases were cited: *Walstabb v. Spottiswoode*, 15 Mees. & Wels. 501; *Clement v. Todd*, 1 Exch. Rep. 268; *Nockels v. Crosbie*, 3 B. & C. 814; and *Woutner v. Shairp*, 2 Car. & Kir. 273.

His Honour said:—This is the case of a bankruptcy, not of an individual nor of any number of individuals, but a special and particular bankruptcy of a company under the provisions of the 9 & 10 Vict. c. 28. The question, whether the present respondent is entitled to prove, must depend upon this, namely, whether at the time of the bankruptcy the company were indebted—that is, whether at the time of the bankruptcy, if the event of the bankruptcy had not happened, he had a right to sue for the money constituting the alleged debt in respect of which he now seeks to prove. He seeks to prove in respect of a sum of 50 guineas paid to the company under the letter of allotment. If a few individuals of the company, or any individual connected with the company, had defrauded him in respect of this payment, it would not be material now, unless the fraud were the act of the company, because the application is against the company. Now, I do not see any evidence to satisfy me that the company obtained the money from this gentleman by fraud. He meant to contribute his money to a fund, upon which contribution he would place himself in the same position, whatever that might be, of a number of other persons, also contributors, or who were to become contributors; and as evidence of that, or as evidence of something more, he was to receive

a scrip certificate of the performance of a certain condition on his part. Now, if upon application for a scrip certificate, he had been refused; if he had established such a case so that judicially it could be pronounced a refusal, it may be that he would have established his case. But, upon the evidence, I am not satisfied that any such refusal has been established. If such refusal had, however, been established, it may be that he would not have entitled himself to sue for the money, without having given some notice of rescinding the contract, or demanding the money. Upon that I give no opinion. The fact is here, that before the bankruptcy it does not appear that he had either demanded the money or given any notice of rescinding the contract. Upon what ground then can I say that the company, or an immense body of other individuals—the other contributors who had received from him his addition to their common fund—were liable to repay him in particular before the bankruptcy? The circumstance of the bankruptcy cannot in my judgment give the right. He must establish a case of legal or equitable debt before the bankruptcy; that is, that a state of things existed in consequence of which all the other members of the company were bound to pay him especially his demand, this sum which he had contributed to the common mass. No such case has been made out. He is not entitled to call for his money any more than the other contributors; and if all of them had a right to demand their money, there would not be wherewithal to pay. They all stand upon an equal footing, having a right to share in the ultimate residue. What reason then is there for placing one in a better position than another? I confess I do not see any. My impression is that there is not any debt, and I am very much relieved from any embarrassment and difficulty I might feel in differing from the learned Commissioner by this, that I am convinced that the argument and the evidence here have been and are more extensive than they were before him. I do not think that the case before me and the case before him can be considered the same. I am of opinion that the right of proof is not established. His Honour said, he should reserve the question, whether he could give the respondent his costs out of the estate, until Saturday, when he should be informed whether it was intended to appeal—a proceeding which he meant neither to encourage or discourage.

May 6th. Counsel for the respondents intimated that they should not appeal, and the costs were directed to be paid out of the estate.

Queen's Bench.

(Before the Four Judges.)

Foster and another v. Temple, executor of Taylor. Trinity Term, 1848.

PRACTICE.—COUNTY COURT.—PLAINT.—
SUMMONS.

Where a plaint was entered with the clerk of the County Court "*Foster and another v.*

Temple, executor of Taylor," and the summons served on the defendant was "Foster and another v. Temple, executor of Thompson," the judge has power, in order to prevent the claim being barred by the Statute of Limitations, to direct a fresh summons to issue on the original plaint.

A PLAINT was entered at the County Court for the district of Westminster, under the 9 & 10 Vict. c. 95, "Foster and another against Temple as executor of Taylor." In the summons which issued on the plaint the action was described "Foster and another against Temple as executor of Thompson." When the cause came on to be heard, and the objection was pointed out, the judge was of opinion he could not hear it on such summons, but directed a fresh summons to issue on the original plaint, so that the case might come on to be heard the next time the Court was held. This was done in order to prevent the claim being barred by the Statute of Limitations. A rule nisi was afterwards obtained for a prohibition to restrain the judge of the County Court from proceeding with the cause.

The Attorney-General (Sir J. Jervis) for the judge of the Court. The plaint being properly and correctly entered with the officer of the Court, it is competent for the judge to direct a fresh summons to issue when it appeared that the first, by reason of a mere clerical error, had become inoperative. Section 59 directs, that a plaint in writing shall be entered with the clerk of the Court, stating the names and the last known places of abode of the parties, and "therefore, a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the Court, according to such form, and be served on the defendant so many days before the day on which the Court shall be holden at which the cause is to be tried, as shall be directed by the rules made for regulating the practice of the Court, as hereinafter provided; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known." The rules of practice which have been settled by the judges now form part of the act, and the power of amendment given by rule 12 is applicable to the present case. Rule 12. "Where any such summons has not been served, as hereinbefore directed, the judge may, in his discretion, in order to save the Statute of Limitations, direct another summons, or successive summonses, to be issued, bearing the same date and number as the first summons." In *Huggett v. Parkin*,^a the irregularity was in the service of the writ, but the writ itself was good.

Mr. Udall appeared for the plaintiff in the action.

Mr. Horry, in support of the rule. By section 75 of the County Courts' Act, it is enacted

"that no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid, of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued." By rule 12 of the practice of the Court, which has been referred to, power is only given to the judge to direct a fresh summons to issue where the first has not been served; but in the present case the summons was served, and therefore that rule does not apply. The defendant can only know the cause of action from the summons, and when that is served he must attend the Court to prevent judgment being given in his absence. In *Roberts v. Bate*,^b it was held that where parties have pleaded in abatement for non-joinder of a defendant, this Court will not set aside the plea, or allow the writ to be amended, on the ground that the plaintiff is barred by the Statute of Limitations from bringing a fresh action. The summons must be taken to be the commencement of the action, and that having failed by reason of the neglect of the plaintiff, he must make a fresh plaint before he can be heard.

Lord Denman, C. J. I do not think that we ought in this case to interfere by granting a prohibition. The judge of the County Court has decided, and I think rightly, that a fresh summons may issue on the original plaint.

Mr. Justice Patteson. I think the first summons was a mere nullity.

Coleridge and Erle, JJ. concurred.

Rule discharged.

Common Pleas.

Bailey v. Robson. Easter Term; 1848.

COUNTY COURTS' ACT.—SUGGESTION TO DEPRIVE OF COSTS.—INSUFFICIENCY OF AFFIDAVIT.

The affidavit in support of a rule to enter a suggestion to deprive a plaintiff of costs under the County Courts' Act, 9 & 10 Vict. c. 95, s. 129, must show that the cause of action arose within the jurisdiction of the County Court within which the defendant dwelt or carried on business at the time of the action brought, as required by the 128th section.

Lush showed cause, in this case, against a rule obtained to enter a suggestion upon the record to deprive the plaintiff of his costs, under the County Courts' Act, 9 & 10 Vict. c. 95. He objected, that the affidavit in support did not show that the cause of action arose within the jurisdiction of the Court within which the defendant dwelt or carried on his business at the time of the action brought, and therefore, under the 128th section, the concurrent jurisdiction of this Court did not sufficiently appear to have been taken away. To bring the case within the operation of the 129th section, which deprived

the plaintiff of costs, the defendant in his affidavit was bound to negative the excepted cases specified in the 128th section.

H. Simon, in support of the rule, submitted, that it was not necessary to state in the affidavit that the cause of action arose within the jurisdiction of the Court within which the defendant dwelt or carried on business.

Per curiam. The affidavit ought to have that statement as well as the others, in order to show that the plaintiff was precluded under the County Courts' Act from availing himself of the concurrent jurisdiction reserved to the Superior Courts by the 128th section, and expressly referred to in the 129th section.

Rule discharged

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRACTICE.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.]

ABSCONDING TO AVOID PROCESS.

31st General Order of May, 1845.—Where a party against whom a judgment had been recovered, had taken advantage of a stay of execution to convert all his personal property into money and go abroad, after notice from the creditor that he intended to file a bill to enforce the judgment against his real estate as soon as the interval required for that purpose, by the stat. 1 & 2 Vict. c. 110, should have expired; *Held*, on such bill being filed accordingly, that the defendant was to be considered as having absconded to avoid process in this suit, and therefore, at all events, within the 31st Order of May, 1845.

But *semble*, if it had appeared that he had gone abroad within two years before the filing of the bill to avoid process generally, that would have been sufficient within the meaning of the order. *Cope v. Russell*, 2 Phill. 404.

AFFIDAVITS.

Motion.—Defendant moved, on affidavits, to dissolve an *ex parte* injunction. The motion stood over at the plaintiff's request. The defendant then filed his answer; after which the plaintiff filed several affidavits. On the motion being resumed, those affidavits were held to be inadmissible. *Woodin v. Field*, 15 Sim. 307.

AFFIDAVIT OF SERVICE OF ORDER.

An affidavit of the service of an order of the Court, must state that such order was "duly passed and entered." *Willets v. Willets*, 5 Hare, 597.

AMENDMENTS AT THE HEARING.

An order made at the hearing of a cause in the Court below, by which the plaintiff was al-

lowed to amend his bill for the purpose of making a better case, but not to alter the prayer or go into new evidence, and the defendant was to be at liberty to put in a further answer, and examine witnesses, if necessary, in support thereof was, upon appeal, discharged. And the practice generally of allowing amendments at the hearing, except for the purpose of making the record complete as to parties, or, under particular circumstances, adapting the prayer to the case made and proved, was reprobated as dangerous, and unwarranted by the established rule of procedure in Courts of Equity. *Watts v. Hyde*, 2 Phill. 406.

Case cited in the judgment: *Palk v. Clinton*, 12 Ves. 62.

ANSWER.

Construction of the 38th Order of August, 1841, declining to answer interrogatories.—A defendant cannot, under the 38th General Order of August, 1841, decline to answer any interrogatories, merely on the ground that the bill is open to a general demurrer. *Mason v. Wakeman*, 2 Phill. 516.

Cases cited in the judgment: *Dolder v. Lord Huntingfield*, 11 Ves. 283; *Faulder v. Stuart*, 11 Ves. 296; *Shaw v. Ching*, 11 Ves. 303.

APPEAL.

Ex parte order.—The Lord Chancellor will not hear a motion by way of appeal from an *ex parte* order pronounced by another branch of the Court. *Sturgeon v. Hooker*, 2 Phill. 289.

APPEARANCE.

By plaintiff.—When a subpoena to answer an amended bill had been served on defendant's solicitor: *Held*, that an appearance could not be entered by the plaintiff for the defendant, under the 29th Order of May, 1845. *Sewell v. Godden*, 1 De G. & S. 126.

Case cited: *Marquis of Hertford v. Suisso*, 13 Sim. 489.

See *Service of Subpœna*.

ASSETS, ADMISSION OF.

See *Interest on Legacy*.

CREDITORS' SUIT.

Costs at law.—In a creditor's suit the plaintiff did not establish his debt at the hearing, but the Court retained the bill, giving him liberty to bring an action. He produced other

evidence and recovered in the action.—Decree for payment of the debt and costs in equity, but no costs given of the proceedings at law. *Gregson v. Booth*, 5 Hare, 536.

CROSS CAUSE.

See *Husband and Wife*.

DECREE.

Inconsistency.—*Inquiries to be limited to issue raised in pleadings.*—On a bill subsequently filed by the father against the plaintiff in the former suit, complaining that since he had got into possession of the estate under that decree, he had refused to perform the stipulations in the father's favour, of the first agreement, and praying specific performance thereof; the Vice-Chancellor being of opinion at the hearing, that the plaintiff had no equity for such relief, but that he had a right to be restored, as far as possible, to the condition in which he stood at the time of that agreement, gave him leave to insert, by amendment, an alternative prayer for relief of that kind; and on the amended record directed certain inquiries on that footing, conceiving that such decree was not inconsistent with that in the former suit. But on appeal by the plaintiff, the Lord Chancellor held the contrary, and that whether the present plaintiff was or was not entitled originally to enforce the first agreement, the present defendant, by taking a conveyance of the estate under the former decree, had waived any equity he might have had to resist such a claim; and his lordship made a decree for specific performance, at the same time disapproving of the order for amending the prayer, which had not been appealed from.

Observations on the importance of confining inquiries, directed by a decree, strictly to the issue raised by the case upon the pleadings. *Bellamy v. Sabine*, 2 Phill. 426.

See *Enrolment of Decree*.

DISMISSAL OF BILL.

1. *Where action not brought as ordered.*—Where a bill is retained at the hearing, with liberty to the plaintiff to bring an action, the order ought to go on to direct that in case the action be not brought within a certain time, the bill shall stand dismissed. *Wood v. Rowcliffe*, 2 Phill. 382.

2. *Reference as to title.*—Pending a reference of title, ordered upon motion, in a suit for specific performance, the defendant cannot, under the 114th Order of May, 1845, dismiss the bill for want of prosecution. *Collins v. Greaves*, 5 Hare, 596.

ENROLMENT OF DECREE.

To prevent the enrolment of a decree, the order for setting down the cause to be re-heard must be actually served, and notice of its having been made is not sufficient. *Groom v. Stinton*, 2 Phill. 384.

EXCEPTIONS.

Injunction.—A reference *instanter* of exceptions in an injunction case, upon an *ex parte*

motion, is regular, notwithstanding the 16th General Order of May, 1845, Art. 25. *Teesdale v. Swindell*, 9 Beav. 491.

See *Referring Exceptions*.

FURTHER DIRECTIONS.

Matters at issue at the first hearing, which are neither decided, put into a train of investigation, nor reserved, must, on further directions, be regarded either as abandoned or as points on which the plaintiff was entitled to no order.

At the first hearing, liberty was given to the defendant to bring an action as to a charge. He abstained from doing so: *Held*, that in the absence of some proper excuse, the charge must be considered as having failed. *Passingham v. Sherborn*, 9 Beav. 424.

GUARDIAN.

See *Infant*.

HEARING OF CAUSE.

See *Amendment at Hearing; Jurisdiction*.

HUSBAND AND WIFE.

Cross cause.—*Stay of proceedings.*—A bill by a husband and wife, in right of the wife against her father, for an account, and a cross bill by the father to establish a set-off. The husband having put in a separate answer to the cross bill without leave of the Court, and having filed a replication in the original suit, an order obtained by the father from the Court below to stay proceedings in that suit till the wife should have answered the cross bill, was, on suspicion of collusion between the father and daughter, discharged. *Lenaghan v. Smith*, 2 Phill. 537.

INFANT.

Guardian.—After an infant defendant had appeared, the plaintiff moved, under the 32nd Order of May, 1845, that *J. S.*, a solicitor, might be appointed the infant's guardian, to answer the bill and defend the suit: *Held*, that, as the infant had appeared, the Court might grant the motion on an affidavit stating, merely, that notice of the motion had been served on the solicitor who had entered the appearance, after the expiration of the time allowed for answering, and more than six days before the hearing of the motion. *Cookson v. Lee*, 15 Sim. 302.

INJUNCTION.

After an injunction had been granted, restraining a defendant from permitting a certain injurious effect to be produced by a given cause, (but not otherwise restraining any definite act,) the apprehended injury took place, but the defendants denied, to the best of their belief, that it arose from the alleged cause; and the Court, in such circumstances, refused to treat the defendants as contumacious, until it should have been conclusively determined by a verdict at law that the injury complained of was produced by the cause assigned.

The verdict of a jury on the trial of one issue had found that the forbidden cause would produce the effect, but inasmuch as a new trial of the issue had been directed, the Court would

not treat the verdict of the jury, on the first trial, as sufficient evidence to connect the cause with the effect, for the purpose of proceeding as upon a breach of the injunction. *Dawson v. Paver*, 5 Hare, 424.

Case cited in the judgment: *Blackmore v. Glamorganshire Canal Company*, 1 Myl. & K. 154.

See *Exceptions*.

INTEREST OF LEGACY.

Admission of assets.—Payment by the executor of the interest of a legacy to the tenants for life under the will is not conclusive as an admission of assets by the executor; but such payment may be explained as having been made by mistake, or for other reasons or causes; and in that case the usual account of assets may be directed at the suit of parties interested in the estate. *Postlethwaite v. Mounsey*, 6 Hare, 33 n.

Case cited in the judgment: *Bernard v. Puffrett*, 5 Myl. & Cr. 63.

INTERROGATORIES.

1. Application for leave to exhibit interrogatories in the Master's office, for the examination of an executor, the object being to charge him with a breach of trust not raised by the pleadings, refused with costs.

A bond, given by a testator to his daughter, was assigned by her and her husband to trustees for the daughter and children. The husband and wife subsequently assigned it to *A. B.* to secure a debt. After the testator's death, his executor, with notice, as he alleged, of the first assignment, paid to *A. B.* the amount of the debt. A decree was made for taking the usual accounts of the testator's estate, and the trustees claimed the amount of the bond; but the Master being of opinion that, as the matter stood, the payment of the executor to *A. B.* was good, an application was made to the Court by the wife and children (defendants in the cause) for leave to examine the executor as to the fact of notice, but it was refused with costs. *Ford v. Bryant*, 9 Beav. 410.

2. Under a common decree against an executor to take the accounts, the executor was interrogated as to two specific sums, and he fully answered. A new set of interrogatories were exhibited with a view of throwing discredit on this answer: *Held*, that the Master was wrong in allowing them. *Suckermore v. Dimes*, 9 Beav. 518.

See *Answer*.

IRREGULARITY.

Omitting to serve notice of replication, plea, demurrer, &c.—The omission by a party to serve notice, according to the 23rd General Order of October, 1842, of filing a replication, plea, demurrer, &c., on the opposite party, on the same day that the replication, plea, demurrer, &c., is filed, will in ordinary cases be corrected, not by rendering the replication, plea, demurrer, &c., inoperative, or taking it off the file for irregularity, but by extending the time

allowed to the opposite party for taking the next step in the cause, so as to give him the benefit of the time which he would otherwise lose by the delay in the service. *Wright v. Angle*, 6 Hare, 107.

See *Time to Answer*, 1.

ISSUES.

Ecclesiastical Court.—*Prohibition.*—It being suggested that, in consequence of the subject-matter of the plaintiff's claim being an ecclesiastical one, the proceedings necessary for ascertaining his right would have to be commenced in the Spiritual Court, the order (2 Phill. 291) was varied merely by giving the plaintiff liberty to take such proceedings (instead of bringing an action) as he might be advised, for the purpose of establishing his right; the Court being of opinion that the peculiar nature of the demand, and of the remedy applicable to it, afforded no reason for departing from its usual course of procedure in a case in which its jurisdiction was resorted to merely as an ancillary to a legal right. *Bullin v. Masters*, 2 Phill. 529.

JURISDICTION.

Defendant not served with process.—*Hearing as against the other defendants.*—In a suit of a legatee claiming several legacies under the will and codicils of the testator, against the executor, naming as a defendant another legatee, who under one construction of a bequest would be entitled to an interest in one of the legacies claimed by the plaintiffs, the plaintiffs alleged by their bill that the other legatee so named as a defendant, was out of the jurisdiction, but did not prove it; and upon motions *ex parte*, supported by affidavits, that such other legatee could not be found to be served with process, obtained leave to file a replication, and afterwards to set down the cause against the defendants who had appeared and answered. At the hearing, the absence of the other legatee was urged by the executor as a preliminary objection to the hearing of the cause; but the Court heard the cause upon the questions of construction on the bequests in which the absent legatee was not interested, and reserved the consideration of the question as to the bequest, in which it was suggested that the absent party had an interest, directing that legacy to be brought into Court, and also directing an inquiry before the Master, whether the absent party was out of the jurisdiction. *Mores v. Mores*, 6 Hare, 125.

LEGACY.

See *Interest on*.

ORDER.

See *Affidavit of Service of: Appeal; Striking out Cause*.

PAUPER.

A party being in possession and enjoyment of the property in question, which was worth 140*l.*, and 10*l.* a year, dispaupered. *Topwell Taylor*, 9 Beav. 493.

PETITION.

The petition of a person not a party to the cause must state his residence, otherwise it cannot be heard. *Glazbrook v. Gillatt*, 9 Beav. 492.

PETITION OF RIGHT.

It is not competent to the King, or rather to his responsible advisers, to refuse capriciously to put into a due course of investigation any proper question raised on a petition of right. *Semble. Ryves v. Duke of Wellington*, 9 Beav. 579.

PROCESS.

See *Jurisdiction; Absconding*.

PRODUCTION OF DEEDS.

Delivery to the depositor.—Deeds brought into Court by the executor under the common order for production of documents made in a creditor's suit, will, after the debts are paid, be ordered to be delivered up to the party by whom they were deposited; and the Court refused to order such deeds to be delivered to the plaintiff in the cause, although he was the tenant for life of the estate comprised in the deeds. *Purkett v. Lewis*, 6 Hare, 65.

PROHIBITION.

See *Issues*.

PUBLICATION.

If a cause was at issue before the Orders of May, 1845, came into operation, publication in it does not pass either under the 111th Order, or by giving rules according to the old practice; but a special order must be made for the purpose. *Thomas v. Lewis*, 15 Sim. 296.

Cases cited in the judgment: *Wheatley v. Wheatley*, 7 Beav. 377; *Lovell v. Blew*, 13 Sim. 492.

See *Striking out Cause*.

RECEIVER.

A receiver of a moiety of an estate, claimed by the plaintiff as tenant in common with the defendant, who was in possession of the whole, granted, under the circumstances. *Hargrave v. Hargrave*, 9 Beav. 549.

REFERRING EXCEPTIONS.

Exceptions to answer will not be ordered to be taken off the file because the order of reference is not served in due time. But if the plaintiff serves the order after the time, and obtains a warrant, the defendant is entitled to apply to the Court for his costs. *Atlee v. Gibson*, 1 De G. & S. 192.

Case cited in the judgment: *Dalton v. Hayter*, 1 Phill. 515.

SEPARATE ACCOUNT.

In order to save the expense of serving different parties, an inconsiderable aggregate fund was ordered to be severed and carried over to separate contingent accounts. *Handley v. Metcalfe*, 9 Beav. 495.

SERVICE OF SUBPŒNA.

Conditional appearance.—A defendant, served with an irregular copy of a subpœna to appear

and answer, has a right to have such service discharged with costs, if he applies speedily; and he may be heard upon entering a conditional appearance with the registrar. *Johnson v. Burnes*, 1 De G. & S. 129.

See *Absconding to avoid Process*.

SETTING DOWN CAUSE.

Orders giving leave to the plaintiff to file a replication, and to set down the cause as against the defendants who had appeared and answered; upon affidavits that another defendant could not be found to be served with process, the plaintiff being unable to make the suit effectual against such other defendant under any of the General Orders of the Court. *Mores v. Mores*, 6 Hare, 127.

STAY OF PROCEEDINGS.

See *Husband and Wife*.

STOP ORDER.

1. Form of stop order when husband and wife join in an assignment of the wife's reversionary chose in action. *Moreau v. Polley*, 1 De G. & S. 143.

2. Stop order, directing that a tin box in Court, containing turnpike securities, should not be parted with without notice to the petitioner. *Williams v. Symonds*, 9 Beav. 523.

3. A petition for a stop order was served, not only on the assignor, but on the other parties to the cause. The petitioner was ordered to pay the costs of the latter. *Glazbrook v. Gillatt*, 9 Beav. 611.

STRIKING OUT CAUSE.

Irregular order.—*Enlarging publication on the ex parte application of one defendant.*—An order made by the Master, although obtained irregularly, and *ex parte* as to some of the parties in the cause, cannot be treated by them as a nullity; and therefore where one defendant had, without notice to his co-defendants, obtained an order from the Master to enlarge publication, and before the enlarged time expired, another defendant, knowing of the order, set down the cause for hearing; the cause was ordered to be struck out of the registrar's book, with costs to be paid by the defendant, who had set it down. *Hughes v. Williams*, 6 Hare, 71.

SUBPŒNA.

See *Service of*.

TIME TO ANSWER.

1. *Irregularity.*—*Bad faith.*—Under an order for time to answer, the defendant may put in a plea, even in abatement.

Where a defendant having obtained such an order upon grounds which would only have justified an extension of time to put in an answer, afterwards availed himself of it to put in a plea of outlawry: an order made by the Court below to take the plea off the file "for irregularity" was discharged, on the ground, that whether the filing of the plea was or was not, under the circumstances, contrary to good faith, it was not irregular. *Hunter v. Nockolds*, 2 Phill. 540.

2. *Application to the Master.—Plea.*—A defendant residing abroad, had obtained two orders from the Master for “time to answer,” not including the expression that leave was given “to plead or demur.” The defendant’s solicitor, on application for a 3rd order, produced before the Master a document which he stated was the draft of the answer, which answer would be filed without delay, and the Master gave two months’ further notice. The defendant afterwards filed a plea to the bill: *Held*, that the plea was an answer, and satisfied the terms of the orders giving time to answer. *Hunter v. Nockolds*, 6 Hare, 12.

TRAVERSING NOTE.

Taken off file.—Traversing note taken off the file at the instance of the defendant, asking for leave to put in his answer after replication. *Towne v. Bonnin*, 1 De G. & S. 128.

[We have selected these points from the several “regular” Reports, and shall follow them by a Collection from the pages of the Legal Observer, which are too numerous to be conveniently incorporated in the same number.]

BUSINESS OF THE COURTS.

Privy Council.

The Judicial Committee of the Privy Council will meet for the despatch of business on the following days, viz:—

Monday . . . June 26, 1848.
 Tuesday 27 ”
 Wednesday 28 ”
 Thursday 29 ”
 Friday 30 ”
 Saturday July 1 ”
 Monday 3 ”

Tuesday 4, 1848.
 Wednesday 5 ”
 Friday 7 ”
 Saturday 8 ”

By order of the LORD PRESIDENT.

Council Office, Whitehall, June, 1848.

LIST OF APPEALS.

Ready for hearing before the Judicial Committee of the Privy Council,

JUNE, 1848.

| APPELLANTS. | RESPONDENTS. | WHENCE SET DOWN. | SOLICITORS OR PROCTORS. | |
|------------------------------------|--------------------------------------|---|--|--------------------------------------|
| | | | APPELLANTS. | RESPONDENTS. |
| Baniane | The Queen | Vice-Admiralty, Cape of Good Hope | Sladen and Glen- nie | Dyke |
| Ras Muni Dibiah Handley | Prawn Kishen Doss Edwards | Bengal, April 13, 1847 Prerogative Court, Nov. 27, 1847 | A. Clarke Pritchard. | Lawfords. |
| Winter | Fraser | British Guiana, Dec 13, 1847 | Oliver | Oliverson |
| Mussumat Iman Bandi | Wajid Ali Khan | Bengal, Jan. 23, 1848 | R. Clarke | Lawfords. |
| Waring | Waring | Prerogative Court, Feb. 2, 1848 | Sladen and Glen- nie | Jenner, Dyke, and Jenner |
| Richards & others | Attorney-Gen. of Jamaica | Jamaica, Feb. 4, 1848 | Middleton | Oliver |
| Kemp and others | Tindall and others. | High Court of Admiralty, March 14, 1848 | Jenner, Dyke, & Jenner | Rothery |
| Fennell | Bate | Court of Arches, March 27, 1848 | Rothery | Jenner, Dyke, and Co. |
| McKay | Rutherford | Canada, April 27, 1848 | Law, Holmes, Anton, and Turnbull | Capes and Stuart |
| The Queen | José Alvey Dias | Vice-Admiralty, St. Helena, May 26, 1848 | Dyke | Ingleheart |
| Petley | Catto | High Court of Admiralty, May 26, 1848 | Clarkson | Gostling |
| Browning | Budd | Prerogative Court, May 27, 1848 | { Lochner } | { Fox, Mundell, and and Nicholl } |
| Smee | Bryer | Prerogative Court, June 1, 1848 | Jenner, Dyke, & Co. . . . | Toller and Sons |
| Beech | Marquis | High Court of Admiralty, June 6, 1848 | Sladen and Glen- nie | Coote |

CHANCERY SITTINGS.

Lord Chancellor.

After Trinity Term, 1848.

AT LINCOLN'S INN.

| | | |
|---------------------|---------|---|
| Saturday | June 24 | } The 1st Seal—Appeal Motions and Appeals. |
| Monday | 26 | |
| Tuesday | 27 | } Appeals. |
| Wednesday | 28 | |
| Thursday | 29 | } (Petition-day) Petitions and Appeals. |
| Friday | 30 | |
| Saturday | July 1 | } Appeals. |
| Monday | 3 | |
| Tuesday | 4 | } The 2nd Seal—Appeal Motions and Appeals. |
| Wednesday | 5 | |
| Thursday | 6 | } (Petition-day) unopposed Petitions and Appeals. |
| Friday | 7 | |
| Saturday | 8 | } Appeals. |
| Monday | 10 | |
| Tuesday | 11 | } (Petition-day) unopposed Petitions and Appeals. |
| Wednesday | 12 | |
| Thursday | 13 | } Appeals. |
| Friday | 14 | |
| Saturday | 15 | } The 3rd Seal—Appeal Motions and Appeals. |
| Monday | 17 | |
| Tuesday | 18 | } Appeals. |
| Wednesday | 19 | |
| Thursday | 20 | } (Petition-day) unopposed Petitions and Appeals. |
| Friday | 21 | |
| Saturday | 22 | } Appeals. |
| Monday | 24 | |
| Tuesday | 25 | } (Petition-day) unopposed Petitions and Appeals. |
| Wednesday | 26 | |
| Thursday | 27 | } The 4th Seal—Appeal Motions and Appeals. |
| Friday | 28 | |
| Saturday | 29 | } The General Petition-day. |
| Monday | 31 | |

N. B.—Such days as his Lordship sits in the House of Lords excepted.

The Sittings will close on the 10th August.

Master of the Rolls.

After Trinity Term, 1848.

AT THE ROLLS.

| | | |
|--------------------|---------|--|
| Saturday | June 24 | } Consent Causes and Petitions.—Motions. |
| Monday | 26 | |

AT THE JUDICIAL COMMITTEE.
Monday, June 26, to July 5th, inclusive.

AT THE ROLLS.

| | | |
|--------------------|--------|--|
| Thursday | July 6 | } Consent Causes and Petitions.—Motions. |
| Friday | 7 | |

AT THE JUDICIAL COMMITTEE.
Friday, July 7th and 8th.

AT THE ROLLS.

| | | |
|---------------------|---------|---|
| Monday | July 10 | } Pleas, Demurrers, Causes, Further Directions, and Exceptions. |
| Tuesday | 11 | |
| Wednesday | 12 | } (Petition - day) Petitions, (unopposed first,) Short Causes and Causes. |
| Thursday | 13 | |
| Friday | 14 | } The 4th Seal—Motions. |
| Saturday | 15 | |
| Monday | 17 | } General Petition-day. |
| Tuesday | 18 | |

| | | |
|---------------------|----|---|
| Wednesday | 19 | } Pleas, Demurrers, Causes, Further Directions, and Exceptions. |
| Thursday | 20 | |
| Friday | 21 | } Motions. |
| Saturday | 22 | |
| Monday | 24 | } Petitions in General Paper. |
| Tuesday | 25 | |
| Wednesday | 26 | } Unopposed Petitions and Consent Causes, on Saturday the 24th June, and Thursday, the 6th July; and Unopposed Petitions and Consent and Short Causes, on Saturday, the 15th July, and Saturday, the 22nd July; each day at the Sitting of the Court. |
| Thursday | 27 | |
| Friday | 28 | } Notices.—Consent Petitions must be presented, and copies left with the secretary, two days before the day on which it is intended they should be heard. |
| Saturday | 29 | |
| Monday | 31 | |

Vice-Chancellor of England.

AT LINCOLN'S INN.

| | | |
|---------------------|---------|---|
| Saturday | June 24 | } The 1st Seal—Motions. |
| Monday | 26 | |
| Tuesday | 27 | } Pleas, Demurrers, Exceptions, Causes, and Further Dirs. |
| Wednesday | 28 | |
| Thursday | 29 | } (Petition - day,) Petitions, (unopposed first,) Short Causes, and Causes. |
| Friday | 30 | |
| Saturday | July 1 | } Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Monday | 3 | |
| Tuesday | 4 | } The 2nd Seal—Motions. |
| Wednesday | 5 | |
| Thursday | 6 | } (Petition - day,) Petitions, (unopposed first,) Short Causes, and Causes. |
| Friday | 7 | |
| Saturday | 8 | } Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Monday | 10 | |
| Tuesday | 11 | } (Petition - day,) Petitions, (unopposed first,) Short Causes and Causes. |
| Wednesday | 12 | |
| Thursday | 13 | } Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Friday | 14 | |
| Saturday | 15 | } The 3rd Seal—Motions. |
| Monday | 17 | |
| Tuesday | 18 | } Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Wednesday | 19 | |
| Thursday | 20 | } (Petition - day,) Petitions, (unopposed first,) Short Causes, and Causes. |
| Friday | 21 | |
| Saturday | 22 | } Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Monday | 24 | |
| Tuesday | 25 | } (Petition - day) Petitions, (unopposed first,) Short Causes and Causes. |
| Wednesday | 26 | |
| Thursday | 27 | } The 4th Seal—Motions. |
| Friday | 28 | |
| Saturday | 29 | } General Petition-day. |
| Monday | 31 | |

N. B. The Sittings will close on the 10th August. His Honour will take unopposed Petitions at head of paper every day during the Sittings.

Vice-Chancellor Knight Bruce.

AT LINCOLN'S INN.

| | | |
|---------------------|---------|---|
| Saturday | June 24 | The 1st Seal—Motions. |
| Monday | 26 | Bankrupt Petitions. |
| Tuesday | 27 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Wednesday | 28 | { Bankrupt Petitions and Ditto. |
| Thursday | 29 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Friday | 30 | { (Petn.-day) Petitions and Ditto. |
| Saturday | July 1 | Short Causes and Causes. |
| Monday | 3 | Bankrupt Petitions. |
| Tuesday | 4 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Wednesday | 5 | { Bankrupt Petitions and Ditto. |
| Thursday | 6 | The 2nd Seal—Motions. |
| Friday | 7 | { (Petition-day) Petitions and Causes. |
| Saturday | 8 | Short Causes and Causes. |
| Monday | 10 | Bankrupt Petitions. |
| Tuesday | 11 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Wednesday | 12 | { Bankrupt Petitions and Ditto. |
| Thursday | 13 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Friday | 14 | { (Petition-day) Petitions and Ditto. |
| Saturday | 15 | Short Causes and Causes. |
| Monday | 17 | Bankrupt Petitions. |
| Tuesday | 18 | The 3rd Seal—Motions. |
| Wednesday | 19 | { Bankrupt Petitions and Causes. |
| Thursday | 20 | { Pleas, Demurrers, Exons, Further Directions, and Causes. |
| Friday | 21 | { (Petition-day) Petitions and Ditto. |
| Saturday | 22 | Short Causes and Causes. |
| Monday | 24 | Bankrupt Petitions. |
| Tuesday | 25 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Wednesday | 26 | { Bankrupt Petitions and Causes. |
| Thursday | 27 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Friday | 28 | { (Petition - day) Petitions, Short Causes, and Causes. |
| Saturday | 29 | (The 4th Seal) Motions. |
| Monday | 31 | { (General Petition - day.)—Petitions, and Bankrupt Petitions. |

N. B. The Sittings will close on the 10th August. The Vice-Chancellor Knight Bruce will take Short Causes and unopposed Petitions on Saturday the 5th August; and Bankrupt Petitions on Wednesday the 9th August.

Vice-Chancellor Wigram.

AT LINCOLN'S INN.

| | | |
|---------------------|---------|---|
| Saturday | June 24 | { The 1st Seal—Motions and Causes. |
| Monday | 26 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Tuesday | 27 | |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | { Short Causes, Petitions, (unopposed first,) and Causes. |
| Saturday | July 1 | |
| Monday | 3 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Tuesday | 4 | |
| Wednesday | 5 | |
| Thursday | 6 | { The 2nd Seal—Motions and Causes. |
| Friday | 7 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Saturday | 8 | { Short Causes, Petitions, (unopposed first,) and Causes. |
| Monday | 10 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Tuesday | 11 | |
| Wednesday | 12 | |
| Thursday | 13 | |
| Friday | 14 | |
| Saturday | 15 | { Short Causes, Petitions, (unopposed first,) and Causes. |
| Monday | 17 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Tuesday | 18 | { The 3rd Seal—Motions and Causes. |
| Wednesday | 19 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Thursday | 20 | |
| Friday | 21 | |
| Saturday | 22 | { Short Causes, Petitions (unopposed first,) and Causes. |
| Monday | 24 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Tuesday | 25 | |
| Wednesday | 26 | |
| Thursday | 27 | |
| Friday | 28 | { Short Causes, Petitions, (unopposed first,) and Causes. |
| Saturday | 29 | { The 4th Seal — Motions and Causes. |
| Monday | 31 | { (General Petition-day) Petitions. |

N. B. The Sittings will close on the 10th August.

CHANCERY CAUSE LISTS.

TRANSFER OF CAUSES.

The following Causes, (except such as the parties may desire to retain in the present List, on the ground that Briefs have been, for the purpose of hearing, delivered to counsel not practising in the Courts of Vice-Chancellor Knight Bruce, and Vice-Chancellor Wigram,) will, on the 27th

June instant, be transferred from the VICE-CHANCELLOR OF ENGLAND to the VICE-CHANCELLOR KNIGHT BRUCE and VICE-CHANCELLOR WIGRAM:—

To the Vice-Chancellor Knight Bruce.

Ashburner v. Wilson, fur. dirs. and costs.
 Hill v. Sanders, 2 causes, ditto.
 Fitch v. Friend, 4 causes, ditto.
 LAWSON v. Meek.
 Warden v. Ashburner, 2 causes, fur. dirs. and costs.
 Burton v. Taylor, fur. dirs. and costs.
 Brooke v. Warwick, ditto.
 Claridge v. Pemberton, ditto.
 Haffenden v. Wood, ditto.
 Norcott v. Gordon, ditto.
 Martindale v. Hayton, ditto.
 Potter v. Waller, 2 causes, exons.
 Cookson v. Lee, 5 causes, fur. dirs. & costs.
 Guopratt v. Young, 2 causes.
 Berkeley v. Swinburne, 6 causes, fur. dirs. and costs.

Barratt v. Stockton and Darlington Railway Co., fur. dirs. and costs.
 Arnold v. Arnold.
 Pigott v. Pigot, 2 causes.
 Nash v. Holland.
 Penny v. Watts.

To the Vice-Chancellor Wigram.

Duisdale v. West.
 Chambers v. Artis, fur. dirs. and costs.
 Holland v. Teed, exons.
 Webb v. Burley, fur. dirs. and costs and petition.
 Attorney-Gen. v. Phillips.
 Edgar v. Heselstue.

Cleaver v. Sloan, 4 causes, fur. dirs. and costs.
 Hopkin v. Hopkin.
 Nixon v. Taff Vale Railway Company.
 Registrar's Office, June 17, 1848.

COMMON LAW SITTINGS.

Queen's Bench.

This Court will, on Saturday the 24th of June inst., take the *Crown Paper* after the two following cases from the *New Trial Paper*, viz. :—

Edwards and wife v. Williams.
 Roberts v. Campbell.

On Monday, the 26th of June inst., the *New Trial Paper* will be taken ;

And on Tuesday the 27th, and Wednesday the 28th days of June inst., and Saturday the 1st, and Wednesday the 12th days of July next, the *Special Paper* will be taken, commencing with the selected cases.

By the Court.

Exchequer of Pleas.

At the Sittings in Banc after the present Term, the Court will proceed with business in the following order, until and including Friday the 30th day of June instant.

- 1st, *New Trial Paper*, (omitting the causes tried before the Lord Chief Baron).
 - 2ndly, The Demurrers.
 - 3rdly, The Special Cases.
- After Friday the 30th day of June instant, Demurrers and Judgments only.

CIRCUITS OF THE JUDGES.

(Mr. Baron Alderson will remain in Town.)

| SUMMER CIRCUITS. 1848. | MIDLAND. | NORTH WALES. | SOUTH WALES. | HOME. | NORFOLK. | WESTERN. | OXFORD. | NORTHERN. |
|------------------------|------------------------------|-----------------|------------------------|----------------------------------|------------------------|-------------------------------|------------------------|---------------------------|
| Commission Days. | Lord Denman. J. Patteson. | L. C. J. Wilde. | J. Wightman. | L. C. B. Pollock. J. Coltman. | B. Parke. J. Maule. | J. Coleridge. J. Williams. | B. Rolfe. B. Platt. | J. Crosswell. J. Erle. |
| Wednesday July 12 | | | | Hertford | Buckingham | | | |
| Thursday . . . 13 | | | Cardiff | | | Winchester. | Abingdon | |
| Saturday . . . 15 | Oakham and Northampton. | | | | Bedford | | Oxford | York & City |
| Wednesday . . . 19 | Lincoln & [City] | | | Chelmsfd. | Huntingdon | Dorchester | Worcester | |
| Thursday . . . 20 | | | Carmar- [then] | | | | [& City] | |
| Friday . . . 21 | | | | | Cambridge | | Stafford | |
| Saturday . . . 22 | Nottingham [& Tu] | Newtown | | | | Exeter & [City] | | |
| Tuesday . . . 25 | | Dolgelly | Haverford- [west & Tu] | Maidstone | Norwich & [City] | | | |
| Wednesday . . . 26 | Derby | Carnarvon | | | | | | |
| Friday . . . 28 | | | | | | | | |
| Saturday . . . 29 | Leicest. & B. | | | | | Bodmin | Shrewsbury | Durham |
| Monday . . . 31 | | | Cardigan | | Ipswich. | | | |
| Wednesday Aug. 2 | Coventry | Beaumaris | | Lewes | | | Hereford | |
| Thursday . . . 3 | Warwick | | | | | | | Newcastle & [Tu] |
| Friday . . . 4 | | | Brocon | | | Wells | | |
| Saturday . . . 5 | | Ruthin | | | | | Monmouth | |
| Monday . . . 7 | | | | Guildford | | | | Carlisle |
| Wednesday . . . 9 | | Mold | Presteign | | | | Gloster & [City] | Appleby |
| Thursday . . . 10 | | | | | | | | |
| Friday . . . 11 | | | | | | Devizes | | Lancaster |
| Saturday . . . 12 | | Chester | Chester | | | | | Liverpool |
| Wednesday . . . 16 | | | | | | Bristol | | |

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 1, 1848.

“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

EXECUTION OF PROCESS AND THE FEE SYSTEM.

MR. COMMISSIONER FANE'S LETTERS.

We have already directed attention to the letters of Mr. Commissioner Fane on Bankruptcy Reform, published and sanctioned by the London Committee for procuring an Amendment of the Bankruptcy and Insolvency Laws. (See *ante*, p. 129). We reserved for consideration his observations on the Execution of Process and the Fee System, subjects on which he has propounded some homely truths, stated in clear and forcible language.

The learned Commissioner is of opinion that the method by which the execution of judgments is provided for by the Courts of Common Law is fundamentally erroneous. He thus describes the machinery by which the Common Law Courts enforce their judgments:—

“The theory is, that as soon as the judicial power has pronounced its judgment, the executive is to cause it to be executed, and the officer of the Crown on whom the duty devolves is the sheriff. The sheriff is, as every one knows, not paid by the public. He is, indeed, entitled, by a law of 1587, to certain fees of office; but even these he never receives for his own use. Being generally a country gentleman, appointed for one year only, and totally ignorant of the details of his duty, he does not act personally. All he does is to select some attorney as his under-sheriff, and to him he at once transfers his duties and lawful emoluments. The under-sheriff then appoints bailiffs under him, with whom, aided by certain persons called “followers,” rests the actual execu-

tion of the law, each judgment creditor selecting such bailiff as he prefers to assist him. But, although the actual execution of the law rests with the not very trustworthy individuals at the bottom of the scale, the legal responsibility for its due execution rests with the country gentleman at the top, and if anything illegal is done, it is from the sheriff that redress is to be sought. Hence the sheriff requires a bond of indemnity from his under-sheriff, and the under-sheriff requires similar bonds from his bailiffs; and thus, by a series of legal contrivances the responsibility for wrong is at last fixed upon the real wrongdoer, the bailiff.”

After commenting upon the unreasonableness of requiring a country gentleman, totally ignorant of law, to superintend its execution, the injustice of rendering him responsible out of his private fortune for the mistakes or misdeeds of those he employs, and the absurdity of removing him from office when he has learned some portion of his duty, and substituting another person equally ignorant as he was when first appointed, Mr. Fane proceeds to describe the systematic oppression and extortion, begotten and encouraged by this anomalous state of things. Besides the well-known extortions of the “Spunging-House,” when process is executed against the person, he alludes to the various modes by which extortion is effected in cases in which the property of debtors is taken in execution; and remarks that in fraudulent cases the difficulty of detection is aggravated by the circumstance, that the officer of the law is selected and paid by the parties to the fraud, and is utterly regard-

less of the public interests. The remedy suggested for these abuses is, to render the officers of justice removeable, and thereby responsible. The bailiff the public cannot remove, and as truly observed:—"To mulct him in a pecuniary penalty, and yet leave him in office, is to invite further extortion, for the object of extortion is profit, a pecuniary mulct is loss, and the only way to reimburse a loss is further profit, in other words, further extortion."

After appealing to the experience of the profession and the public, as to the inadequate protection from extortion afforded by an action for damages, Mr. Fane adverts to the Fee System, which he describes as "substituting irregular extortion for regular remuneration," and emphatically denounces as the source of all the mischief. Having cited the testimony of Lord Langdale, as delivered before the Commons Committee, on Fees in Courts of Justice, and published *ante*, page 4, the learned Commissioner winds up with the following recommendatory suggestion, which is well deserving of attention:—

"**ABOLISH THE FEE SYSTEM.** Abandon irregular remuneration, as the stimulant to exertion, and rely on proper salaries, sense of duty, and hopes of promotion, as a sufficient substitute. Take a leaf out of the book of that enlightened statesman Sir Robert Peel; and as he substituted a paid and disciplined *criminal* police for the old parish watchman, the parish constable, and the police who hung about the police courts, so let us substitute a *civil* police, as regularly paid and disciplined, for sheriffs, under-sheriffs, bailiffs, and followers. One excellent result of such a measure would be, that the two bodies of police would mutually aid each other, and that good conduct in that body, in which the remuneration would of course be less, might be rewarded by promotion to the other. Another result might be, that we might cease to hear that an Englishman's house was his castle! against the officers of justice! for, when the officers of justice were public servants, regularly paid, clothed in uniform, and disciplined, surely no man would be allowed to shut his doors against them, as if they were robbers. To the common objection, the expense, the obvious answer is, the present system is indirectly more expensive than any that could be substituted for it. But a better answer would be, industry is the real wealth of society; and, as the only way to encourage industry is to protect it, it follows that no expense can be too great which will effectually attain that end. The losses sustained by the industrious classes through bad debts have been estimated at twenty-five millions a year; and these losses may be justly attributed more to bad laws and bad execution of laws than to any other cause. The expense, however, might be amply provided for by a moderate percentage upon the proceeds of property sold."

The Common Law maxim, *Domus sua est unicuique tutisimum refugium*, or as it is familiarly construed, "Every man's house is his castle," appears to have excited a very disproportionate degree of indignation on the part of the learned Commissioner. He conceives that this maxim "encourages foolish people to incur debt in the hope of evading payment and suffering." We venture to doubt if it has any such effect. The only practical operation of the rule is, that an officer charged with the execution of civil process is not at liberty to break open the outer door of a house to execute a writ of *ca. sa.* against the person, or of *fi. fa.* against the goods of the owner. If the officer charged with the execution of civil process finds the outer door open, he may enter. So far back as the period comprehended in Cowper's Reports, it was solemnly determined that the privilege does not extend to an inner door, and that a bailiff in execution of mesne process may break open the door of a lodger, having first gained peaceable entrance at the outer door of the house. (*Lee v. Gansel*, Cowp. 1.) In fact the law justifies and favours the civil officer who enters without force or terror, but as the preservation of the public peace is of paramount importance, it is considered that this may be unnecessarily compromised by permitting a bailiff, in the execution of civil process, to break open the outer door of a house. If this were the only encouragement afforded by the law to improvident and unprincipled debtors, the number would soon be considerably reduced. Mr. Fane points out another palliative of arrest, far more important in its operation,—the parliamentary privilege from arrest claimed by members of the legislature; and, with respect to the abolition of arrest on mesne process, he fortifies by his testimony, the views so frequently put forth in this publication, by stating as his deliberate opinion that "this supposed cure has introduced most fatal mischiefs; for by it creditors have been deprived of the only cheap, speedy, and effectual means the law gave them of compelling payment or arrangement."

We hope and expect to find that the learned Commissioner intends to continue his Letters. They terminate somewhat abruptly. The question last alluded to,—the abolition of arrest on mesne process,—is one in which we should gladly see the grounds of his opinion stated more at length.

NEW BILLS IN PARLIAMENT.

POOR LAWS.

IN one of the bills brought in by Mr. Buller, for *payment of Parochial Debts, and Auditing Accounts*, it is provided by section 7, that parishes may agree to share the costs of several appeals involving the same common principle, including as well the costs that may be properly incurred in and about the trial of such appeals on the part of the several *respondents* as the costs of the *appellants*, in such proportions as may be determined with reference to the amount of interest of the several parishes in the question, but payments for the current costs and expenses may be called for pending the trial of the appeals.

The solicitors engaged in cases of this kind will, of course, look to the wording of the clause, and see that there is no objection to it.

In another of Mr. Buller's bills, relating to the *Charges on Poor Law Unions*, provision is made by ss. 11 & 12, for an appeal to the Quarter Sessions against the intended new valuation of the parishes. One month's notice is to be given of the trial of such appeals, setting forth the grounds of the appeal, and the name of the parish whose valuation is objected to. The order of the Quarter Sessions is not to be removeable by *certiorari*, and the costs of appeal are to be in the discretion of the Court of Quarter Sessions.

REMOVAL OF THE COURTS FROM WESTMINSTER.

IN the first part of the second volume of Mr. C. Purton Cooper's Reports, just published, there are many interesting and learned notes relating to the Court of Chancery, and towards the close some important remarks are made on the proposed removal of the Courts from Palace Yard to the vicinity of Lincoln's Inn. These remarks have been called forth by the recent memorial of the Equity Bar to the Lord Chancellor, praying that the Sittings of the Court may be held in Lincoln's Inn during the Terms when Parliament is not sitting.

Mr. Cooper adverts to the destruction of the Houses of Parliament by fire in 1834, and states the several occasions on which the public attention has been called to the expediency of removing the Courts from Westminster. In 1836, he observes, that Mr. Hume, in a debate on the new Houses of Parliament, recommended Lincoln's Inn

Fields as the proper site both for the convenience of the public and the lawyers. In 1841, on a petition from a meeting of attorneys and solicitors, held in the Law Society's Hall, a Select Committee of the House of Commons was appointed, of which Sir Thomas Wilde, then the Solicitor-General, was the chairman. The Lord Chancellor, several of the judges and eminent counsel and solicitors were examined, and their evidence reported. The subject was revived in 1845, on petitions from the Incorporated Law Society, and from a large body of solicitors of London, and a committee appointed, of which Mr. Charles Buller was the chairman. The further evidence was reported with the amended plans of Mr. Barry, who had selected a site between Lincoln's Inn and the Temple. Recently a plan has been approved by the government for building Record Offices on the Rolls' Estate, and, in conjunction with the City, forming a new street from St. Paul's to Carey Street, passing along the north side of the proposed new Courts, and thence to the new street in Leicester Square. On the completion of the Houses of Parliament, it appears highly probable, if not certain, that the Courts must be removed, and no place can be so eligible as that proposed, bounded by Lincoln's Inn on the north, the Temple on the south, Chancery Lane on the east, and New Inn and Clements Inn on the west.

Mr. Cooper, in his "*Lettres sur la Cour de la Chancellerie*," has many important observations regarding the concentration of the Courts, of which we venture to present the following translation:—

"I have in another place said how very inconvenient it seemed to me to hold during four months of the year Chancery Sittings at Westminster, at such a distance from the locality of the offices; and, notwithstanding my great veneration for the "*Marmorea sedes*," I do not hesitate to say, that in this case ancient usage ought to give way to the public good. I have been told that one of the projects of Lord Mansfield (perhaps the most enlightened judge that England has ever seen) was, to build in the middle of Lincoln's Inn Fields, an edifice under whose roof should be collected all the Courts of Common Law and Equity, at a very little distance from the different offices. No doubt this judge knew how much precious time the barristers lose in waiting, day by day, for their cause on the list to be called on; for it often happens that the first cause on the list takes up several days, and yet all the barristers retained for other causes on the list are obliged to be at Westminster, where they are kept by the impossibility of knowing when their causes will come on. This loss of time is still more

prejudicial to young barristers, who have often only one cause to plead, and who cannot be recompensed by what they hear for the time they have lost. It is no longer as it was in the times of Hale and Coke, when students went to the Court three or four hours before the opening of the Sittings, to get good places, and to take instructive notes on what passed. The way of deciding causes is so much altered, that an hour's reading is more useful to a student than three days devoted to the best of the Courts at Westminster. The consequence is, that young barristers pass half of their time in useless walking with their fellow-barristers in the hall, or in talking politics at the neighbouring coffee-houses. The learned Master, seeing how much in his country barristers were degraded, says, somewhere in his 'Phantasien Patriotischen,' that it was the duty of a good government to look to the instruction as well as to the conduct of the barristers, &c. &c. English legislators are not of this opinion: they do not bear in mind that it is from these young men that honourable and learned judges have to be chosen, and that each morning so uselessly spent not only makes them more distant from the good they have to reach, but is in addition a robbery of the public time.

"The inconvenience resulting from holding sittings at Westminster is much more felt by attorneys than barristers. The rules of the Court require that they or some one of their clerks should attend regularly the Court, when their causes are upon the cause lists; and moreover, they are often obliged to pay the expenses of the hearing, if they absent themselves. The same rules oblige them at the same time personally, or by their clerks, to instruct the Chancery Masters in the innumerable matters within their jurisdiction, and whose offices are distant about three-quarters of a league; and since the greater number of these gentlemen only possess the means of keeping one clerk, it seems to me that the law maxim of obliging no one to do an impossibility, has in this matter, an exception much to the prejudice of the poor attorney.

"After what I have said, you will be surprised to hear that an enormous sum has been spent in rebuilding the Courts at Westminster; and that too in a locality so obscure, inconvenient, and small, that it has required all the architect's genius to find room for four halls, even at the sacrifice of all the conveniences which ought to have been attended to, and which are found in nearly all the Inferior County Courts. Nothing marks more the apathy and indifference of the judges and barristers to their own interests down to a recent period than the building of these Courts. Hardly any one took the trouble to ascertain their precise situation, still less their internal arrangement and conveniences to be offered. Hardly one single Chancery barrister saw the rooms allotted to his Court, before the day when the sittings were removed thither; and then it was for the first time that so many complaints were made.

For my part, when I look at the fact that the four Courts with their suitable offices have been built on ground so narrow, and more than that, flanked by two very high walls, only lighted from above, I am more induced to admire the architect's skill in turning to account so few means, than to blame him because the Courts are inconvenient. I must nevertheless observe, that with the money employed to build these inconvenient buildings, he might have been able in a good situation to have built an edifice worthy of the capital of a great nation. I have made this long digression, because it seems impossible to contain in one or two Courts the multitude of barristers and attorneys now practising in Chancery. If therefore more Equity Courts were made sitting at the same time, they must hold their sittings in the same building, and near the Chancery offices; for the barristers and attorneys could by no means possible attend the different sittings at the same time at Westminster and Chancery Lane."

Mr. Cooper, in a note to his Reports (vol. 2, p. 288,) does us the favour to say that

"The reader, who may desire information beyond that furnished above, will do well to refer to the last 24 volumes of the *Legal Observer*—the able and judicious organ of the Law Institution." The attorneys and solicitors throughout the kingdom have for some years past been indefatigable in their exertions to effect a removal of *all* the Courts from Westminster to the neighbourhood of the Inns of Court. It is one of the many anomalies in our institutions which so much perplex foreigners, that an improvement so obvious and in no way prejudicing personal interests, should have been so long, so zealously, and so perseveringly called for by a body, so numerous and influential as are the attorneys and solicitors of the country, and nevertheless that it should still remain uneffected."

* It may be proper to add to this gratifying remark that, although we are enabled from time to time to communicate to the profession an account of the proceedings of the Incorporated Law Society, neither the Council nor the members can be held responsible for the statements or observations contained in the *Legal Observer*. Endeavouring carefully to collect the earliest information, on all subjects of professional interest, and to exercise our best discretion, in the communication and discussion of all matters relating either to the Society or to that branch of the profession to which its members belong, we are glad that for many years the course we have adopted has met with the approbation of those eminent persons upon whose sanction of our labours we set the highest value.—Ed.

NOTICES OF NEW BOOKS.

New Commentaries on the Laws of England. (Partly founded on Blackstone.) By HENRY JOHN STEPHEN, Serjeant-at-Law. Second Edition. Prepared for the Press by JAMES STEPHEN, Esq., Barrister-at-Law. In 4 vols. London: Henry Butterworth. 1848. Pp. 2638.

It is something more than seven years since we noticed the first volume of the first edition of this important work. It will be recollected that it was published volume by volume, and as each appeared we failed not to give it due welcome. The last made its appearance at the close of 1815. The learned author observes, that this mode of publication laboured under the disadvantage of presenting no delineation of the Laws of England entirely correct in reference to any *one point of time*. For as each later volume appeared, the contents of an earlier one were always found to have been considerably broken in upon by the accumulations of new statute law during the intervening period. The present edition being published in contemporaneous volumes, to a certain extent escapes this inconvenience; but cannot wholly do so; for whilst a work of nearly 3,000 pages passes through the press, our insatiable law reformers are sure to alter or add to many parts of the law.

The learned serjeant has adhered to the plan of the first edition in its departure from the path of Blackstone. He has six books instead of four, viz. :—

1. Of Personal Rights.
2. Of Rights of Property, as to Things Real and Things Personal.
3. Of the Rights of Private Relations :—between Master and Servant—Husband and Wife—Parent and Child—and Guardian and Ward.
4. Of Public Rights as to Civil Government ;—the Church ;—the Social Economy of the Realm.
5. Of Civil Injuries, including the Modes of Redress.
6. Of Crimes, including the Modes of Prosecution.

We suppose that the question on the *best mode* of editing Blackstone will for some time longer remain undecided. It appears that Mr. Serjeant Stephen and Mr. James Stewart, each about the same time projected editions of the celebrated Commentaries on a new method. Departing from the old course of reprinting the entire text, and showing the alterations in notes at the foot of the page, each of the learned

editors have adopted a different plan. Mr. Stewart preserves the whole text of Blackstone, but throws into the past tense, as historical, those parts of the law which have been repealed or altered, and introducing into the body of the work the new or amended law. The learned serjeant preserves only such parts as continue in force, omits whatever has been abrogated, and also embodies the new law, distinguishing Blackstone's from his own by brackets.*

We will not attempt to decide which of these two methods is better than the other, nor whether either is better than the former editions. The respect for Blackstone still prevails so generally, that the loss of any of the original text is matter of great regret; and we are not sure that there may not yet be another mode by which all or nearly all of the unrivalled original may be preserved, without detriment to the exposition of the altered state of the law and the wants of the student of the present day.

Whatever difference of opinion there may be on the comparative merits of the editions of Mr. Serjeant Stephen and Mr. Stewart, or of these contrasted with the accurate, terse, and learned notes of Mr. Justice Coleridge, there is, we believe, no doubt that no edition should be overlaid and burdened with elaborate details and notes of practice inconsistent with the general and elementary design of the original Commentaries. Great discrimination is requisite in condensing the scope and object of new statutes and the more important class of judicial decisions; and we have not had time at present to examine carefully all that has been done in the present edition. So far, however, as we have been able to examine these volumes, we think that great care has been bestowed on their revision, comprehending, as to part of the work, the important alterations effected in the last seven years, in others five, and in almost all three years. The new statutes and cases have been brought down to May, 1848, and it appears that the correction of the work, in reference to these statutes and cases, and the revision of the press in general, has been confided by the author to his son; his own retirement from professional practice, and the transfer of his attention to official duties, rendering him less competent than formerly to labours of that description. But the learned serjeant states that the sheets have been invariably laid before him during the progress of the printing, and he

* There is a slight improvement in the form of the brackets from the previous edition.

feels himself able to vouch for their accuracy.

This is a happy combination of labour, uniting the zeal and freshness of youth with the judgment and caution of long experience. We hope to find an opportunity during the ensuing Vacation of minutely looking into the merits of this valuable work, and calling attention to its prominent parts.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

The Statutes effecting alterations in the Law passed during the *present* Session of Parliament, printed *verbatim* in this and the last volume of the *Legal Observer*, are as follow:—

Extending Time for making Railways, vol. 35, p. 204.

Regulating the Queen's Prison, p. 558.

North American Passengers, p. 581.

Crown and Government Security, p. 600.

Oaths in Chancery, vol. 36, p. 7.

Stamp Duties Assimilation, p. 8.

Trial of Controverted Elections, p. 23.

REMOVAL OF ALIENS.

11 VICT. c. 20.

An Act to authorize for One Year, and to the End of the then next Session of Parliament, the Removal of Aliens from the Realm.

[9th June, 1848.]

1. *Power to Secretary of State or Lord Lieutenant of Ireland to order aliens to depart this realm.*—If aliens wilfully refuse to obey such order, they may be committed to gaol until taken in charge for the purpose of being sent out of the realm.—Whereas it is expedient, for the due security of the peace and tranquillity of this realm, that provision should be made, for a time to be limited, respecting aliens arriving or resident in this kingdom: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled and by the authority of the same, That when and so often as one of her Majesty's principal Secretaries of State in that part of the United Kingdom called Great Britain, or the Lord Lieutenant or other Chief Governor or Governors in that part of the United Kingdom called Ireland, shall have reason to believe, from information given to him or them respectively, in writing, by any person subscribing his or her name and address thereto, that for the preservation of the peace and tranquillity of any part of this realm it is expedient to remove therefrom any alien or aliens who may be in any part of this realm, or who may hereafter

arrive therein, it shall be lawful for such Secretary of State in that part of the United Kingdom called Great Britain, and for such Lord Lieutenant or other Chief Governor or Governors in that part of the United Kingdom called Ireland, by order under his or their hand or hands respectively, to be published in the London or Dublin Gazette, as the case may be, to direct that any such alien or aliens who may be within Great Britain or Ireland respectively, or who may hereafter arrive therein, shall depart this realm within a time limited in such order; and if any such alien shall knowingly and wilfully refuse or neglect to pay due obedience to such order, or shall be found in this realm or any part thereof, contrary to such order, after such publication thereof as aforesaid, and after the expiration of the time limited in such order, it shall be lawful for any of her Majesty's principal Secretaries of State, or for the Lord Lieutenant or other Chief Governor or Governors of Ireland, or his or their Chief Secretary, or for any justice of the peace, or for the mayor or chief magistrate of any city or place, to cause every such alien to be arrested, and to be committed to the common gaol of the county or place where he or she shall be so arrested, there to remain, without bail or mainprize, until he or she shall be taken in charge for the purpose of being sent out of the realm, under the authority herein-after given.

2. *Penalty on aliens disobeying such order.*—

That every such alien so knowingly and wilfully refusing or neglecting to pay due obedience to any such order as aforesaid shall be guilty of a misdemeanor, and being convicted thereof, shall, at the discretion of the Court, be adjudged to suffer imprisonment for any time not exceeding one month for the first offence, and not exceeding twelve months for the second and any subsequent offence.

3. *Aliens on neglecting to obey order may be given in charge by warrant of Secretary of State or Lord Lieutenant of Ireland, to be conveyed out of the kingdom.* Where any alien shall allege any excuse for not complying with order, Privy Council to judge of the sufficiency of the same.—Privy Council shall cause a summary of matters alleged against alien to be delivered to him, &c.—That it shall be lawful for any one of her Majesty's principal Secretaries of State, or the Lord Lieutenant or Chief Governor or Governors of Ireland, in any case in which any alien shall be found in this realm after the expiration of the time limited in such order, and whether he or she shall or shall not have been arrested or committed for refusal or neglect to obey such order, or convicted of such refusal or neglect, and either before or after such alien shall have suffered the punishment inflicted for the same, by warrant under his hand and seal, to give such alien in charge to one of her Majesty's messengers, or to any other person or persons to whom he shall think proper to direct such warrant, in order to such alien being conveyed out of the kingdom; and such alien shall be so conveyed accordingly:

elected to the Council. Hitherto the country members have given no indication that they wished to be on the Council. The recent proposition came from a few town members, without the knowledge of the gentlemen proposed, or any other country members; but the suggestion will, no doubt, be duly canvassed before the next election. We have also heard of another proposition for the benefit of country solicitors, which will be brought forward in due time. A considerable purchase has recently been made, and the buildings of the society are about to be enlarged for the general accommodation of the members and the more convenient dispatch of the increasing business of the society, and any suggestions that can be made for the benefit of the provincial members, we are assured, will receive the best consideration.

As stated in the Annual Report of the Incorporated Society, responding to that of the New Association, "There are several important objects of usefulness to the profession which may be pursued by the two societies *in common*, and others which will receive the attention of each *separately*, and be followed out by their own independent means; and in aid of such objects the Council will be always ready to co-operate. From the exertions of both, and their occasional co-operation, the most beneficial results to the profession may be fairly anticipated."

We are sure that neither the New Association nor that large part of the profession which belongs not to any law society in town or country, will be benefited by underrating the important services which have been, and may be, rendered by the Incorporated Society to the profession at large. We cannot suppose that our contemporary, as a member of the Bar, looks with jealousy on these fraternities, and seeks to disunite them; but it is "palpable to feeling as to sight" that most of his writings on the subject have that tendency. We trust, however, that hereafter these professional institutions may be allowed to proceed in their respective vocations without any further mistaken opposition or any ill-founded censures.

A very fallacious inference has been drawn from the circumstance of the same individual having acted, until recently, as Secretary both for the Incorporated and the Metropolitan and Provincial Society. He is erroneously supposed to have been the founder of the former, and then, having discovered that it had failed in some of its purposes, he set about establish-

ing the latter. Now he is entitled to neither of these honours. He assisted the founders of both, but has no claim to the distinction of originating either. The authorship belongs to much abler and more influential persons. He has had the good fortune to possess the confidence of his branch of the profession, and gratefully acknowledges the favourable estimation of his services. It does not, however, seem essential to the fair discussion of the merits of these societies to enter upon any personal question regarding the officer who conducts their affairs, and who, of course, endeavours to the best of his ability to discharge his duty and promote the cause in which he is engaged.

NEW ORDERS IN CHANCERY.

TRUSTEES' INDEMNITY ACT, 10 & 11 VICT.
c. 96.

THE Right Honourable Charles Christopher Lord Cottenham, Lord High Chancellor of Great Britain, with the assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, doth hereby in pursuance of an act of parliament passed in the Tenth and Eleventh year of the reign of her present Majesty, intitled "An Act for better securing Trust Funds, and for the relief of Trustees," and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following, that is to say:—

I. Any trustee desiring to pay money, or transfer stock or securities into the name of the Accountant-General of the Court of Chancery, under the said act is to file an affidavit entitled in the manner of the act and the trust, and setting forth—

1. His own name and address.
2. The place he is to be served with any petition, or any notice of any proceeding or order of the Court relating to the trust fund.
3. The amount of stock securities or money which he proposes to deposit or to transfer, or to pay into Court to the credit of the trust.
4. A short description of the trust, and of the instrument creating it.
5. The names of the parties interested in, or entitled to, the fund to the best of the knowledge and belief of the trustee.
6. The submission of the trustee to answer all such inquiries relating to the application of the stocks, securities or money transferred, deposited, or paid in, under the act as the Court may think proper to make or direct.

II. The Accountant-General on production of an office copy of the affidavit, is to give the necessary direction for transfer, deposit, or payment, and to place the stock, securities, or money to the account of the particular trust, and such transfer, deposit, or payment is to be certified in the usual manner.

III. The trustee having made the payment, transfer, or deposit, is forthwith to give notice thereof to the several persons named in his affidavit, if interested in or entitled to the fund.

IV. Such persons, or any of them, or the trustee, may apply by petition, as occasion may require, respecting the investment, payment out, or distribution of the fund, or of the dividends, or interest thereof.

V. The trustee is to be served with notice of any application made to the court respecting the funds, or the dividends, or interest thereof by any party interested therein or entitled thereto.

VI. The parties interested in, or entitled to the fund are to be served with notice of any application made to the court by the trustee respecting the fund in court, or the interest or dividends thereof.

VII. No petition is to be set down to be heard until the petitioner has first named a place where he may be served with any petition or notice of any proceeding, or order of the court, relating to the trust fund.

VIII. Petitions presented and affidavits filed under the said act are to be entitled in the matter of the said act (10 & 11 Vic., c. 96), and in the matter of the particular trust.

That this order be entered with the Register of the Court of Chancery.

(Signed) COTTENHAM, C.
LANGDALE, M. R.

10 June 1848.

[We gave the substance of these Orders, as soon as they were issued, in a Postscript; and now re-print them fully.]

COSTS OF ATTENDANCE OF COUNSEL AT CHAMBERS.

THE following notice was read in Court, and has been put up at the Judges' Chambers:—

“The Costs of the attendance of Counsel before a Judge at Chambers will in no case be allowed in future, unless the Judge shall certify their allowance.”

DEFECTIVE FORMS OF POLICIES OF INSURANCE.

To the Editor of the Legal Observer.

SIR,—I would draw the attention of the profession and the public, and especially the assured, to the forms of policies issued by too many insurance offices.

The policies *under seal* frequently refer to the terms and conditions of insurance, whether as respects the premiums on a life policy, or against a loss by fire, and which proposals or conditions of insurance are *not under seal*,—the consequence is, that the references are altogether valueless. I will instance two—one in case of a life policy, as referable to death by suicide; the other in case of a fire occurring on the expiration of the year, and within the subsequent 15 days proposed to be insured by the policy; in neither cases could the money be recovered.

Some alteration, therefore, seems indispensable, and every *honest* office will, I hope, adopt it.

CIVIS.

UNITED LAW CLERKS' SOCIETY.

THE Annual Festival of this valuable society took place on Wednesday last, the 28th June, at the Freemasons' Hall. Sir Frederic Thesiger presided, supported by several Queen's Counsel, viz.:—Mr. Watson, Mr. Humfrey, and Mr. Russell Gurney, and by Mr. Freshfield, (formerly the Bank Solicitor,) and other members of the Bar, and by a considerable number of solicitors. We shall give a full report of the meeting, and set forth the Report in an early number. In the meantime, it is scarcely necessary to say that the various toasts were proposed, and responded to, with excellent feeling and much force and eloquence, in behalf of the Law Clerks and their well-conducted association. The Report detailed the large amount of good which had resulted from the relief afforded by the Society during the past year.

A considerable sum was collected, including a handsome donation from Mr. Chilton, of 50*l.*, part of the damages recovered from the railway company, the whole of which the learned Queen's Counsel has divided amongst various charitable institutions.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From May 23rd, to June 16th, 1848, both inclusive, with dates when gazetted.

Bell, Frederic Browne, and Edward Hett, Downham Market, Attorneys and Solicitors. June 2.

Berry, John, and Thomas Greensit Hamer, Bradford and Wakefield, Attorneys, Solicitors, and Conveyancers. June 6.

Lee, William, and Edward Tapley, Sandwich, Attorneys and Solicitors. May 23.

MASTERS EXTRAORDINARY IN CHANCERY.

From May 23rd, to June 16th, 1848, both inclusive, with dates when gazetted.

Clowes, Ellis, Stourbridge. May 26.

Dale, Henry, jun., North Shields. May 23.

Ewart, John, Lynedock Place, Edinburgh, for Scotland. June 6.

Moore, George, Bicester. June 2.

Owen, Thomas, jun., Plas Penmynydd, county of Anglesea. June 16.

Smith, Charles Joseph, Reigate. June 13.

Tripp, John Rolly, Swansea. June 6.

Uhthoff, Edward, Stourbridge. May 26.

CANDIDATES WHO PASSED THE EXAMINATION.*Trinity Term, 1848.*

| <i>Names of Candidates.</i> | <i>To whom Articled, Assigned, &c.</i> |
|---|--|
| Ambler, James Pearson | Harrison Robson, Halifax |
| Baines, George | Edward Nelson Alexander, Halifax |
| Bassett, Robert Goodenough | Charles John Tylee, Romsey |
| Boothroyd, Edward Hyde | John Boothroyd, Stockport |
| Boulton, George | William James Boulton, Northampton-square, Clerkenwell |
| Brookes, George | William Wycherly Brookes, Whitechurch ¹ |
| Bulleid, John George Lawrence | Stephen Holman, Glastonbury |
| Burder, John, jun. | William Gillmore Bolton, 25, Austin Friars |
| Bury, John | John Lawrence, St. Ives |
| Bye, William, jun. | Thomas Hustwick, Soham |
| Cammack, Alfred | Peter Wells, jun., late of Kingston-upon-Hull, deceased; Robert Wells, Kingston-upon-Hull |
| Churchill, Henry | Samuel Field, Deddington |
| Codd, Charles Robinson | John Cook, Scarborough |
| Cowdell, Alfred Burton | William Cowdell, sen., Hinckley; Robert Few, 2, Henrietta-street, Covent-garden |
| Crossland, Robert | James Winder, Bolton-le-Moors |
| Davies, Reginald Stevenson | Henry Whittaker, Boulogne; Joseph Tatham, 10, New-square |
| Dineley, Frederick | James Clift, 30, Bloomsbury-square |
| Dunn, Henry Bidwell | Wm. Drake, East Dereham; J. Turnley, Walbrook-house, Walbrook |
| Eagles, Ezra, jun. | Ezra Eagles, Bedford |
| Foyster, William | Thomas Freer, Brigg |
| Frost, John | Benjamin Bodman, 1, Budge-row, Cheapside, and 15, Blomfield-road, Maida-hill |
| Gill, Frank Selby | William Scrivens, Hastings; James Percy, Phillips, 10, St. Swithin's-lane |
| Goodall, Frederick Bates | John Smith, Nottingham |
| Greaves, Thomas | John Allen Jackson, 22, Parliament-street, Kingston-upon-Hull |
| Greville, Eden Kaye | Henry Taylor Raven, 2, Harcourt-buildings, Temple |
| Hall, Lawrence Robert | John Fox, Nottingham |
| Halton, Charles | William Nanson, Carlisle; John Musgrave, Whitehaven |
| Harris, James Charles | Thomas Heath, Warwick |
| Harrison, Edwin Albert | Alexander Harrison, 3, Edmund-street, Birmingham |
| Harward, Arthur | James Clifford Newbold, Matlock |
| Hooper, Samuel | Nathaniel Hooper, 5, Pump-court, Temple. |
| Hoskins, Thomas, jun. | Daniel Howard, Portsea |
| Howard, Frederick William | John Howard, Liverpool; Robert Baxter, Doncaster |
| Kidd, Robert, jun. | Henry Ingledew, Newcastle-upon-Tyne |
| King, Alfred Hassell | Alfred King, 2, Paper-buildings, Temple; William Bunney Russell, Braunston; and 2, Paper-buildings, Temple |
| King, Samuel Leyson Wickens | Samuel King, 6, Furnival's-inn |
| Lees, Frederick Crowe | William Harding, Burslem |
| Ley, Robert | John Thomas Pilgrim, Atherstone |
| Ley, William Merriam | John Baron Bowker, Bishops Stortford |
| Lloyd, James Hogson | Charles Ford, 5, Bloomsbury-square |
| Loaden, George | William Loaden, 28, Bedford-place, Russell-square |
| Lowe, Thomas Frederic | William Beaumont, Warrington |
| Luard, William Charles | John Marmaduke Teesdale, 51, Fenchurch-street ¹ |
| Lupton, Thomas | Samuel Appleby, 6, Harpur-street, Red-lion-square |
| Marcon, Andrew | Robert Cruttwell, Bath |
| Meadows, John Osmond | Robert James, Glastonbury; George Mathias, Glastonbury |
| Mellor, James William | James Mellor, Ashton-under-Lyne |
| Motteram, John Philip | James Motteram, Birmingham; William Ghrimes Kell, Bedford-row; James Motteram; George Edinson Marsden, Manchester |
| Marshall, John Thomas | Henry Edward Stables, Copthall-court, City; Roger Gadsden, 28, Bedford-row |
| Newbould, John | Samuel Walker, 29, Lincoln's-inn-fields |
| Noble, Thomas Shepherd | Robert Henry Anderson, York; Charles Lever, 10, King's-road, Bedford-row |
| Parker, Robert, jun. | Robert Christopher Parker, Greenwich |
| Parkes, Francis Josiah | Thomas William Parkes, 11, Gray's-inn-square; Charles Austin Brookfield, 12, Bedford-row; Charles Rich Tyerman, 24, Gresham-street |
| Partridge, George Anthony | Robert Wm. Parmeter; Charles Goodwin, Lynn, and 57, Walbrook |
| Perkins, Richard Wickstead | Joseph Wagstaff, Warrington |
| Pickering, Arthur Proctor | Edward Rowland Pickering, 4, Stone-buildings, Lincoln's-inn |
| Pierce, Walter | Edward Bryant Garey, late of 24, Southampton-buildings; Palgrave Simpson, 20, Bedford-row |
| Prescott, George William | Thomas Mortimer Cleobury, 30 ¹ / ₂ , Sackville-street, Piccadilly |

| | | |
|---------------------------|---|---|
| Pritchard, Henry Devereux | • | George Alexander Kilgour, Upper Hamilton-terrace, and 47, Parliament-street |
| Randall, Edward Brodrigg | • | James Chaldecott Sharp, Southampton |
| Ray, Henry Carpenter | • | Henry Ray, Bristol |
| Reed, William | • | Thomas Lancelot Reed, Downham-market |
| Rees, Arthur Harris | • | Marcus Huish, Castle Donington |
| Roberts, William, jun. | • | William Roberts, sen., Coleford ; James Wintle, Newnham |
| Rogers, Hender | • | Williams Hockin, Truro |
| Sawbridge, Charles | • | John Watson, jun., 10, Henrietta-street, Covent-garden ; John Watson, 126, Wood-street, Cheapside |
| Selby, John Caleb | • | Knowles King, Maidstone ; Robert Edmeades, Sheerness |
| Sheffield, William | • | Isaac Sheffield, 68, Old Broad-street |
| Shepherd, Arthur | • | Henry Bradley, 2, Harecourt-buildings, Temple ; John Bridges, Red Lion-square |
| Shuttleworth, Fauconberg | • | George Augustus Crowder, 57, Coleman-street |
| Simmons, Frederick George | • | Henry Hall, 16, New Boswell-court, Lincoln's-inn |
| Smith, George | • | John Lush Alford, Salisbury |
| Stafford, Thomas | • | William Stafford, 13, Buckingham-street, Strand |
| Stedman, Charles Edward | • | Henry Stokes, Fakenham ; John White, 13, Barge-yard-chambers |
| Stuart, William | • | William Clark ; Charles Frederick Sparrow, Wolverhampton |
| Swan, Henry | • | Robert Swan, Lincoln |
| Sykes, Thomas | • | George Mathewman Jervis, Sheffield |
| Terry, William | • | Thomas Scriven, Northampton |
| Terr, Joseph Hooley | • | William Comins, Witheridge |
| Townson, John | • | Thomas Eastham, Kirkby Lonsdale |
| Truwhitt, Charles | • | George Truwhitt, 2, Cook's-court |
| Truwhitt, George, jun. | • | George Truwhitt, 2, Cook's-court |
| Tucker, Samuel Ward | • | Philip Mathews Chitty, Shaftesbury |
| Turner, Frederic Foote | • | Nicholas Broadmead, Langport |
| Wallis, John Chapman | • | Brooke Smith, Bristol |
| Warner, William Harding | • | Henry James Harvey, Bath ; George Dawes, Angel-court, Throgmorton-street |
| Watts, Peter Robert | • | Francis Thomas Bircham, 15, Bedford-row |
| Whatley, George | • | George Lawson Whatley, Mitchel Dean ; George Becke, 21, Lincoln's-inn-fields |
| Wood, Richard | • | John Wood, York |

[The Questions will appear in the next Number.]

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Lewis v. Baldwin. May 5, 12, & 29, 1848.

SERVICE OUT OF THE JURISDICTION.—CONDITIONAL APPEARANCE.

The proper time for a defendant, served under the 33rd Order of May, 1845, to complain of the place where the suit is brought against him, is after answer.

The Court refused to allow a conditional appearance to be entered in Court with the Registrar.

THIS was a motion to discharge an order made under the 33rd of the General Orders of May, 1845, allowing subpoenas on the Irish Great Western Railway Company to be served in Ireland. The ground of the application was, that the subject-matter of the suit was situate in Ireland, its object being to set aside an agreement for the amalgamation of a branch railway, which was originally an independent undertaking with the Irish Great Western Railway; and that, out of 15 defendants, 14 were resident in Ireland. It was contended, that the effect of the order, therefore, was to draw into England a suit properly Irish,—a result far from being the intention of the framers of the General Order. On the other side it was stated, that one of the originally registered places of business of the Irish Great

Western Railway Company was in London; that the places of residence of its two registered promoters were both in England; and that, out of the 15 defendants, all, except the railway company, on whose part the present objection was made, had appeared to the bill.

Mr. Goldsmid, for the motion, cited *Whetmore v. Ryan*, 4 Hare, 612.

Mr. Turner and Mr. Anderson, contra. When the motion first came on, Mr. Anderson objected that the company, not having appeared, could not be heard. The ground of their not having appeared was an apprehension on their part that by appearing they should be held to have submitted to the jurisdiction.

Lord Langdale suggested, that the company might avoid this difficulty by entering a conditional appearance.

Mr. Goldsmid then applied for leave to enter a conditional appearance in Court with the Registrar, and referred to *Johnson v. Barnes*, 1 De Gex & Smale, 129, as an instance in which such a practice had been permitted; but

Lord Langdale declined to follow this precedent, and directed the motion to stand over that a conditional appearance might be entered in the regular way, which was accordingly done. With respect to the motion itself, his

lordship expressed his opinion that the question was a very important one, and that certainly it was not the intention of the order referred to, to draw Irish suits into England; but he thought that the question could not properly be raised in the present stage of the cause, before answer. He should be obliged to decide whether the suit was properly instituted, without having the means of judging of the merits. The motion must therefore be refused.

Vice-Chancellor of England.

Ashburnham v. Ashburnham. March 24, 1848.

WILL.—ABATEMENT.—PRIORITY.

A testator bequeathed certain legacies, payable two years after his decease, and gave an annuity for the maintenance of his brother, directing his trustees to make the first payment on the first half-yearly day of payment after his decease, and to set apart sufficient of his estate to pay the annuity, or to invest a sufficient sum in the purchase of a government annuity: Held, that the annuity was not charged on the realty, had no priority, and must abate pari passu with the other legacies.

THIS was a suit instituted for the purpose of having the trusts of the will of Sir William Ashburnham administered. The testator, by his will, dated the 24th of Dec., 1842, after giving certain legacies, and, amongst others, 1,000*l.* to his brother George Ashburnham, directed "that all the aforesaid legacies should be payable and paid at the expiration of two years from the date of his decease, and without interest thereon, in the meantime, or as much sooner as his executors might think fit. He gave his said trustees, thereinbefore named, an annuity of 100*l.* during the life of his brother, the said George Ashburnham, upon trust to apply the same by two equal half-yearly payments, on the 25th March and 29th Sept. in each year; the first payment thereof to commence on such of the said days as should happen next after his decease, towards the personal maintenance or support of his brother, the said George Ashburnham, during his natural life, or until he should attempt to alienate, mortgage, or in any manner charge or incumber such annuity, or any part thereof, or should become bankrupt or insolvent. And from and after his decease, or the happening of any or either of the said events, whichever should first happen, he directed that such annuity should cease, and the property from which the same should arise or be paid should fall into and become part of his residuary personal estate, and be applied and disposed of accordingly. And he directed his trustees either to set apart sufficient of his estate to pay the said annuity, or to invest a sufficient sum in the purchase of a government life annuity." Then, after devising his real estates, he gave all the residue of his real and personal estate to his trustees, their, heirs, executors, adminis-

trators, and assigns, upon trust to sell and convert into money, and from the proceeds pay in the first instance his funeral and testamentary expenses and debts, whether specialty or on simple contract, and the pecuniary legacies and annuities thereinbefore given, and the expenses of executing the trusts of his will. The personal estate of the testator proved insufficient for the payment of the debts, legacies, and annuities, and the question for consideration was, whether the annuity to George Ashburnham was to abate with the other legacies and annuities.

Mr. Bethell, Mr. H. Clarke, Mr. Stuart, and Mr. Daniel, contended, that the annuity must take the usual course and abate with the other legacies. There was nothing in the will to denote an intention to give priority to one legatee over another, except the circumstance of its being an annuity to be paid after the testator's death earlier than the pecuniary legacies. They cited *Thwaites v. Foreman*, 1 Coll. 409; *Beeston v. Booth*, 4 Mad. 161.

Mr. Rolt and Mr. Lewis, for the annuitants, contended, in the first place, that the words of the will directing the trustees to set apart sufficient of his estate to pay the annuity was enough of itself to secure the annuity on the real estate, and, if so, that disposed of the question; and secondly, that if the annuity was chargeable only on the personalty, then it was entitled to priority. It was given for maintenance, and there being a deficiency of assets, the object of the testator must be frustrated if you did not give the annuitant a priority. The annuity stood on a motive and intention in the testator different from all the other legacies. They cited *Brown v. Brown*, 1 Keene, 275.

The Vice-Chancellor said, it appeared to him that there was no priority. If the testator meant that the annuity should have a preference, he had not said so, and the only attempt that had been made to show that he did mean to give a preference was by putting a forced construction on plain language. His Honour then read the clauses in the will, and, after stating his opinion that the annuity was not charged on the real estate, said: here there was a will in which the testator evidently considered there would be a residue, and therefore he could not have intended that there should be a priority. That being so, he was of opinion that there was no pretence for the proposition, and he should declare that the annuity abate with the other legacies *pari passu*.

Queen's Bench.

(Before the Four Judges.)

Dalton v. Tuke and others. Trinity Term, 1848.

ANNUITY.—PAYMENT BY SURETIES UNDER
6 GEO. 4, c. 16, ss. 54 & 55.

Under the 6 Geo. 4, c. 16, s. 55, the sureties for the payment of an annuity after the grantor has become bankrupt have the option either of paying the arrears of the annuity as they become due, or of paying the

sum at which the annuity is valued under the commission.

IN August, 1834, an annuity deed was executed by the defendant Tuke and two other persons, as securities for the payment of the annuity to the plaintiff during the life of Tuke. A fiat in bankruptcy afterwards issued against Tuke, and the plaintiff proved under the commission for the value of the annuity according to the 6 Geo. 4, c. 16, s. 54, and the value of the annuity was estimated at 1,125*l.* The sureties did not pay the sum at which the annuity was estimated, but continued to pay the arrears of the annuity up to the time of the death of Tuke. Section 55 of the above recited act enacts, "That it shall not be lawful for any person entitled to any annuity granted by any bankrupt, to sue any person who may be collateral security for the payment of such annuity, until such annuitant shall have proved under the commission against such bankrupt for the value of such annuity, and for the payment thereof; and if such surety, after such proof, pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due) pay the sum proved as aforesaid, he may be sued for the accruing payments of such annuity, until such annuitant shall have been paid or satisfied the amount so proved," &c. Two orders had been made by Mr. Justice Coleridge at chambers, setting aside a warrant of attorney against Tuke and the sureties, on the ground that by payment of the annuity by the sureties up to the death of Tuke the judgment was satisfied.

Mr. Peacock, on the part of the executor of Tuke, applied to set aside the orders so made by the judge at chambers, and contended that the proper construction of the 6 Geo. 4, c. 16, ss. 54 & 55, was, to substitute the value of the annuity estimated under the commission of bankruptcy for the annuity itself, and that inasmuch as the sums actually paid by the sureties did not amount to the sum at which the annuity was valued, that they were still liable for the remainder.

Lord Denman, C. J. I think there is no ground for this application.

Mr. Justice Patteson. It is clear the statute gives the sureties the option either of paying the estimated value of the annuity, or the arrears as they become due.

Coleridge and Erle, JJ., concurred.

Rule refused.

Queen's Bench Practice Court.

Henry Broom and John Broom v. The Queen.
Easter Term, 1848.

CONVICTION.—WRIT OF ERROR.—QUASHED
FOR WANT OF PROSECUTION.

The defendants were convicted at the Spring Assizes, 1847, of a misdemeanour, and on the following Easter Term sued out a writ

of error, and were admitted to bail under 8 & 9 Vict. c. 68. In Easter Term, 1848, the prosecutor obtained a rule nisi, under the 5th section of 8 & 9 Vict. c. 68, to quash the writ of error and estreat the defendant's recognizances, on an affidavit which stated, "That no process or other proceeding had been had or taken by or on behalf of the said defendants to prosecute the same."

Held, that this rule must be absolute, and that the affidavit sufficiently showed that nothing had been done by the defendants to prosecute the writ, and that it must be taken, in the absence of any answer on the other side, that the delay was wilful.

Held, also, that it was not necessary that the defendants should be called to assign errors before the motion could be made.

THIS was a rule calling on the defendants to show cause why the writ of error sued out by them in this case should not be quashed, and why their recognizance should not be estreated.

It appeared by the affidavits, that the defendants were tried and convicted at the Spring Assizes in 1847, at Oxford, for a riot and assault arising out of a prize fight.

In the following Easter Term they sued out a writ of error and were admitted to bail under the provisions of the Bail in Error Act, 8 & 9 Vict. c. 68.

The present rule was obtained upon an affidavit, which stated, that since the issuing and filing of the writ of error "no process or other proceeding had been had or taken by or on behalf of the said defendants to prosecute the same."

Butt, Q. C., appeared for the defendant John Broom, and contended, first, that the affidavit on which the rule nisi was obtained was insufficient, as it did not state who the prosecutor of the indictment was, or that the motion was made by him or by his authority; second, that it was not expressly shown by the affidavit that errors had not been assigned, or that they had been ruled so to assign errors, which it was contended was necessary before this motion could be made; it was also contended, that as no wilful delay in prosecuting the writ of error had been shown, the rule ought to be discharged.

Phillimore, in support of the rule. The defendants entered into recognizances to prosecute the writ of error with effect, this they both neglected to do, and that being sufficiently shown by affidavit, is all that is necessary to entitle the prosecutors to make this rule absolute. The words of the section under which the rule was moved for, 8 & 9 Vict. c. 68, s. 5, are, "That if the Court in which any such writ of error shall be pending shall, upon motion in that behalf, decide that the defendant or defendants by whom it shall be brought, has or had wilfully delayed or neglected to prosecute the same with effect, it shall be lawful for such Court to order the writ of error to be quashed, and thereupon the defendant or defendants who

brought such writ of error shall be liable to execution upon the judgment." Now, in this case it was sworn that no process or other proceeding has been had or taken by or on behalf of the defendants to prosecute the writ of error which they have sued out, and it is for them to take all the necessary steps.

Cur. ad. vult.

May 5.—*Coleridge, J.* In this case a rule had been obtained for quashing the writ of error of the defendants, and to estreat their recognizances, on the ground that they had wilfully delayed to proceed with their writ, and Mr. Butt, who showed cause for one of the defendants, produced no affidavit in answer, but relied upon the insufficiency of the affidavits upon which the rule was obtained, particularly in the absence of any statement, that errors had not been assigned, and in not showing that the defendants had been ruled to assign errors; now, as to the first point the affidavit states, "that no process or other proceeding has been had or taken by or on behalf of the said defendants to prosecute the same." And I think that this is a sufficient statement that nothing whatever has been done by the defendants, and is an answer to the first objection. Then it is said, that the defendants have not been ruled to assign errors, and it was said that by the old practice this was necessary, but this is a proceeding under a particular act of parliament, and the words of it are so general that if it appears that he delay, it is all that is necessary to enable the Court to interfere. The words are, "That if the Court in which any such writ of error shall be pending, shall, upon motion, decide that the defendant or defendants by whom it shall be brought, has or have wilfully delayed or neglected to prosecute the same with effect, it shall be lawful for such Court to order the writ to be quashed," &c. &c. Now, it seems to me that this case comes within those general words, and that as no answer has been given by the defendants, that I ought to take it for granted that there has been wilful delay. The Court therefore will quash the writ of error, and direct the recognizances to be estreated.

Rule absolute.

Common Pleas.

Mathew v. Broughall. Easter Term, 1848.

SMALL DEBTS' ACT.—SUGGESTION TO DEPRIVE OF COSTS.—INSUFFICIENCY OF AFFIDAVIT.

Where the affidavit in support of an application to enter a suggestion on the record to deprive the plaintiff of costs, under the 9 & 10 Vict. c. 95, omitted to state that the defendant was within the jurisdiction of the Small Debts' Court "at the time of the action brought." Held, that it was insufficient to warrant the granting of a rule to enter the suggestion.

IN this case a rule nisi had been obtained to enter a suggestion upon the record to deprive the plaintiff of costs under the City of London Small Debts' Act, 10 & 11 Vict. c. 71, and the County Courts' Act, 9 & 10 Vict. c. 95. The affidavit of the clerk to the defendant's attorney in support of the rule stated, amongst other things, that "the cause of action arose within the jurisdiction of the Court in Middlesex, within which the defendant dwells and carries on his business, as he (the deponent) verily believes."

Gaselee, Serjeant, showed cause, and objected that the affidavit did not sufficiently negative all the exceptions in the 128th section of the 9 & 10 Vict. c. 95, it being consistent with the statement in the affidavit that the defendant did not dwell or carry on business within the jurisdiction of the Court "at the time of the action brought."

Byles, Serjeant, contra, contended that the affidavit sufficiently showed that the plaintiff ought to have sued in the Small Debts' Court, and, in the absence of any affidavit of the other side, to show the contrary, the plaintiff ought not to have his costs.

Per Curiam. The affidavit ought certainly to have stated that the defendant resided or carried on business within the jurisdiction of the Court at the time of the action brought, and as it does not show that, the present rule must be discharged.

Rule discharged.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRACTICE.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, p. 169.]

ABATEMENT.

See *Dismissing Bill*, 3.

ADMINISTRATION, LIMITED.

On a bill filed by covenantees against the real estate of the covenantor, there not being a

general administrator of the personal estate of the covenantor, but only an administration limited to the purposes of the suit: *Held*, that the plaintiff being entitled to, or able to obtain, general letters of administration, the suit was defective for want of such general administration. *Robinson v. Bell*, 35 L. O. 144.

AFFIDAVIT.

See *Injunction*, 1, 3; *Service*, 1.

AMENDMENT OF BILL.

1. *Clerical Error*.—A bill cannot be amended by altering the name of a plaintiff under an order which does not specify the alteration to be made. *Walls v. Symes*, 34 L. O. 153.

2. *Reasonable diligence*.—Unless reasonable diligence be shown by the plaintiff in moving under the 68th May, 1845, for special leave to amend his bill, the Court will refuse such motion when the proposed amendment would entirely alter the frame of the bill and materially affect the other defendants. *Jenkins v. Jenkins*, 34 L. O. 379.

ANSWER.

Notice.—The 23rd Order of 1842, which requires notice of the filing of an answer, demurrer, plea, or replication to be given the same day to the adverse party or his solicitor, must be strictly acted on. But where an answer was filed on a Saturday, and an order *nisi* served the same day, while notice was not given till the Monday following, but no inconvenience was shown to have arisen; the Court refused to discharge the order *nisi*, but made the defendant pay the costs of the motion to discharge it. *Lord Suffield v. Bond*, 34 L. O. 275.

See *Injunction*, 1.

APPEAL.

Return of deposit.—The appellant is entitled to the return of the sum deposited on presenting a petition of rehearing, if the decree appealed against is reversed; and he is not deprived of this right by the fact that a case has been directed to try a question raised in the suit. *Flight v. Marriott*, 34 L. O. 132.

See *Dismissing Bill*, 2.

BANKRUPT.

See *Dismissing Bill*, 4.

CHARITY.

Petition.—*Attorney-General*.—The Court refused to make an order on a petition relating to a charity, because the petition was presented by the relator in his own name, instead of by the Attorney-General on his information. *Attorney-General v. Mayor and Corporation of Huntingdon*, 35 L. O. 192.

CONTEMPT.

See *Pro Confesso*, 1.

CREDITORS' SUIT.

Contribution.—The general rule that creditors, proving their debts under a decree in a creditor's suit, must contribute their proportion to the costs of the suit, does not extend to such

costs as are incurred by the plaintiff in investigating and establishing a special and peculiar claim. *Dunning v. Hards*, 34 L. O. 327.

See *Purchase-Money*, 2.

DECREE.

Executors.—*Partners*.—The Court will, on motion, introduce into a decree a direction, that monies ordered to be paid to executors shall be paid to "them or either of them," but not a direction that monies ordered to be paid to a solicitor shall be paid to his surviving partner. *Hulme v. Chitty*, 34 L. O. 300.

See *Inrolment*.

DEPOSIT.

See *Appeal*.

DISCHARGING ORDER.

Irregularity.—An order of course can only be discharged upon the ground of irregularity in obtaining it. *James v. Buckle*, 34 L. O. 227.

DISMISSING BILL.

1. *Motion*.—114th Order of 1845.—The right of the defendant to move to dismiss under the 114th Order of 1845, within four weeks after his answer, or the last of his answers (if more than one), is not affected by the decision of the Lord Chancellor in *Arnold v. Arnold*, (reported 34 L. O. 61.)

Principle of the distinction adopted at the Rolls on motions relating to orders of course obtained there, between irregularity and impropriety of practice. *Sprye v. Reynell*, 34 L. O. 179.

Case cited in the judgment: *Dalton v. Hayter*, 7 Beav. 386.

2. *Appeal pending*.—Where an appeal is pending from a case deciding a point of practice material to the conduct of a suit, on an application being made to dismiss the plaintiff's bill for want of prosecution, the Court, on a proper case being made out by the plaintiff, will direct such application to stand over until judgment on such appeal has been given. *Gatland v. Tanner*, 34 L. O. 276.

3. *Abatement*.—The Court will allow the plaintiff in an abated suit to dismiss the bill without costs, with the consent of the personal representative of the defendant. *Anon.* 34 L. O. 493.

4. *Bankrupt*.—A motion to dismiss a bill for want of prosecution after the plaintiff has become bankrupt is irregular. *Robinson v. Norton*, 34 L. O. 542.

5. 63rd Order of May, 1845.—If the bill be not revived within the time limited, on an application made under this order, a fresh application should be made to the Court to dismiss the bill. *Puget v. Lillington*, 35 L. O. 96.

6. Four of the defendants answered; an order to amend was served upon them, with a tender of 6s. 8d. costs; the amendments required an answer, but no subpoena was served: *Held*, that the defendants were entitled, upon the expiration of the usual time for filing replication, &c., to move to dismiss. *Rastrick v. Elsworth*, 35 L. O. 411.

EXECUTORS.

See Decree.

FEME COVERT.

1. *Application to sue in formâ pauperis.*—*Next friend.*—An application by a married woman to sue *in formâ pauperis*, and without a next friend, granted, it appearing that there was no one ready to act as such next friend. *Wellesley v. Wellesley*, 34 L. O. 493.

2. *Set-off.*—A legacy was bequeathed to an unmarried woman, who, after the date of the will and before the death of the testatrix, married. The legacy was given out of the produce of real estate directed to be sold. The wife possessed herself of part of the assets of the testatrix, consisting of a deposit note, and the executors brought an action against the husband for the same, and recovered a verdict with damages. A suit was instituted against the executors, and the party to whom the produce of the real estate was bequeathed (subject to payment of the legacy) for payment of the legacy. *Held*, that the legatee of the produce subject to the legacy was not a necessary party, and also that the executors could not set-off the judgment in the action against the legacy. *Reeve v. Richer*, 35 L. O. 97.

3. *Plea.*—Where a *feme covert* was sued as a *feme sole*, and had entered an appearance, it is necessary to go to the Courts for an order to put in a plea of her coverture, without joining her husband in the plea. *Higginson v. Wilson*, 35 L. O. 172.

See *Infant*, 2; *Next Friend*, 1, 2; *Pro Confesso*, 2.

GUARDIAN.

See *Infant*, 1.

INFANT.

1. *Guardian ad litem.*—Under special circumstances, the Court will appoint a guardian *ad litem* to an infant resident within the jurisdiction, without bringing him into Court, or by means of a commission. *Lamont v. Primavesi*, 34 L. O. 203.

3. *Settlement.*—*Husband and wife.*—Where a husband who had married an infant tenant in tail of real estate was in contempt in not obeying an order of the Court, and the infant was so entitled, subject to a jointure term of 200 years, the Court, on petition heard with the cause instituted by her for an account of the rents of her estate holding her interest to be equitable, ordered a reference to the Master to approve of a settlement during the joint lives of herself and husband, if the term should so long last. *Newenham v. Pemberton*, 35 L. O. 117.

3. *Payment of money out of Court.*—Where an infant, entitled to the dividends of a fund in Court, is resident without the jurisdiction under the care of a guardian, the Court has authority to order the dividends to be paid to the officer of the Court in this country, he being responsible for the remittance of the same to the foreign guardian. *Ex parte Morrison*, 35 L. O. 64.

4. *Two suits.*—*Master.*—The Court will not, as a matter of course, without evidence as to the merits, refer it to the Master to inquire which of two suits instituted on behalf of an infant, and both ready for hearing, is most for his benefit. *Rundle v. Rundle*, 35 L. O. 367.

5. *Staying proceedings.*—A reference to the Master to inquire which of two suits it will be most for the benefit of the infants shall be prosecuted, does not, as of course, stay the proceedings in the suits pending the reference, but the matter is in the discretion of the Court. *Westby v. Westby*, 34 L. O. 565.

INJUNCTION.

1. *Answer.*—*Affidavit.*—On a motion on filing of answer to dissolve an injunction, *Held*, that an affidavit to prove the identity of a model filed since the answer could not be admitted. *Corporation of Liverpool v. Morris*, 34 L. O. 301.

2. *Receiver during litigation in the Ecclesiastical Court.*—The Court will not grant an injunction or appoint a receiver in respect of a testator's assets merely on the ground that a suit has been commenced in the Ecclesiastical Court for the purpose of recalling the probate granted to the executor named in the will; but special circumstances must be shown. *Newton v. Rickelts*, 34 L. O. 419.

3. *Affidavit.*—*3rd Order of May, 1839.*—Where, on a motion, a common injunction is sought to be obtained for default of answer to an amended bill, an affidavit in support of the motion, containing a general statement of the truth of the amendments, is sufficient. *Gregory v. Wilson*, 35 L. O. 292.

See *Receiver*, 5.

IRREGULARITY.

See *Discharging Order*.

INROLMENT OF DECREE.

Service of notice of an order for rehearing the cause will not prevent the inrolment of the decree. The order must be passed, entered, and served before the docket has been signed. *Groom v. Stinton*, 35 L. O. 8.

ISSUE PRO CONFESSO.

1. *Mistake.*—Where a defendant had obtained an order that plaintiff should proceed to trial of an issue by a certain time, or that in default, the issue should be taken *pro confesso* as against the plaintiff, and the plaintiff omitted through mistake to give notice in time of the trial, an order to take the issue *pro confesso* refused. *Varty v. Duncan*, 34 L. O. 407.

2. Where defendant had obtained an order that the plaintiff should proceed to trial of an issue by a certain time, or that in default the issue should be taken *pro confesso* as against the plaintiff, and the plaintiff omitted, through mistake, to give notice in time of the trial, an order to take the issue *pro confesso* was refused, and an extension of the time for trying the issue was granted to the plaintiff. *Varty v. Duncan*, 34 L. O. 612.

LEASE.

Defendant.—Process.—The process to compel a defendant in a cause to execute a lease settled by the Master is the same as in the case of other parties. The Court will not make a four-day order against him in the first instance. *Rowley v. Adams*, 35 L. O. 213.

ORDER TO COMMIT.

Non-delivery of documents.—The course of practice to enforce the delivery up of documents is, to obtain first the general order for delivery, then an order specifying some limited time, then the four-day order, and lastly the order to commit. *Re David Taylor*, 34 L. O. 407.

NEXT FRIEND.

1. A next friend of a married woman having been twice changed, is allowed to be changed again after decree, although the defendants opposed the application on the ground that the party proposed was not a person of substance. *Jones v. Fawcett*, 34 L. O. 511.

2. *Substitution.—Married woman.*—The substitution of a new next friend by plaintiff, married woman, is not a proceeding as of course, and therefore the Court will not change a substantial next friend for a person who is insolvent or a pauper. *Jones v. Fawcett*, 34 L. O. 406.

OUTLAWRY.

See *Revivor*.

PARTNERS.

See *Decree*.

PAUPER.

See *Feme Covert*, 1; *Receiver*, 2.

PAYMENT INTO COURT.

1. *Property tax.*—Payments made for property tax by the purchaser of property sold under the decree of the Court cannot be deducted on the payment of the purchase-money into Court. *Duval v. Mount*, 35 L. O. 260.

2. *Payment into Court.*—The Court refused to vary as of course an order to pay a sum of money into Court to be paid to A. B., by directing the money to be paid at once to A. B., and refused also to consider, upon that form of application, whether the payment could be enforced by a writ of *fi. fa.* under the 5th Order of May, 1839. *Gardler v. Gardler*, 35 L. O. 322.

See *Purchase Money*.

PAYMENT OF MONEY OUT OF COURT.

Petition.—Parties contributing.—On a petition for payment of money out of Court to parties entitled to shares in the same, certain other parties, also entitled, appearing by counsel, although not parties to the petition, allowed to participate in the order, they contributing *pro rata* to the costs. *Eldrid v. Whitefoot*, 34 L. O. 524.

PENDENTE LITE.

Semble, that where a suit is instituted by executors in this Court pending litigation respecting the will in the Ecclesiastical Court, the suit should not be brought to a hearing

until the litigation in the Ecclesiastical Court is disposed of. *Barton v. Haynes*, 35 L. O. 437.

PETITION.

See *Charity*.

PRO CONFESSO.

1. *Contempt.*—A defendant having appeared, and being in contempt for want of answer, on being brought to the bar of the Court, pleaded poverty, when it was referred to the Master to inquire as to her poverty: the Master certified that she had made default in proving her poverty, and the Court, on application of the plaintiff, granted a *habeas corpus cum causis* to bring her to the bar, and ordered that the proper officer should attend at the return of the writ with the record, in order that the bill might be taken *pro confesso*. *Bull v. Falkner*, 34 L. O. 79.

2. *Husband and wife.*—Under the 76th of the New General Orders of May, 1845, a bill may be taken *pro confesso* against a husband and wife where no answer has been put in by either of them, and where the husband has been taken in execution by a writ of attachment for want of answer. *Alexander v. Osborne*, 34 L. O. 201.

3. *Under 77th and 78th Order of May, 1845.*—Where a defendant, who had appeared but did not answer, could not be found, the bill was directed to be taken *pro confesso*, but without prejudice to any application he might make in the meantime. *Clarke v. Clarke*, 34 L. O. 440.

4. *Absconding.—Defendant.—Setting down cause.*—A defendant had absconded, and the cause appeared in the cause paper for the day to be taken *pro confesso*, but, no one appearing, it was struck out. The Court, upon the application of the plaintiff, allowed the cause to be restored to the paper. *Harver v. Renon*, 35 L. O. 438.

5. *Service.*—The time, from which the three weeks, required by the 76th Order of May, 1845 to elapse between the notice of a motion to take a bill *pro confesso* and the motion, are to be computed, is the date of the last service of the notice, if there has been more than one. *Garder v. Garder*, 35 L. O. 64.

See *Issue*, 1, 2.

PURCHASE-MONEY.

1. *Payment into Court.—Acceptance of title*—A purchaser will not be allowed to pay his purchase-money into Court without accepting the title, notwithstanding that all parties to the suit consent. *Denning v. Henderson*, 34 L. O. 493.

2. *Creditor's suit.*—In a creditor's suit, the Court will not shorten the interval interposed by the ordinary practice between the order *nisi* for liberty to pay purchase-money into Court, and the making that order absolute, though all the parties to the suit consent. *Vernon v. Theilsson*, 35 L. O. 63.

3. *Payment into Court.*—A purchaser allowed under the circumstances to pay his whole purchase-money into Court, on motion, notwith-

standing a direction in the decree under which the estate was ordered to be sold, that the surplus only of the monies produced should be paid into Court after discharging debts and legacies. *Bellamy v. Bellamy*, 35 L. O. 116.

4. *Payment into Court.—Income Tax.—Stat. 5 & 6 Vict. c. 35, s. 102.*—Where purchase-money and interest are paid into Court, the Court allows no deduction to be made for Income Tax by the purchaser. *Dawson v. Dawson*, 35 L. O. 143.

5. Under special circumstances, the Court will allow purchase-money to be paid into Court, without acceptance of the title. *Morris v. Bull*, 35 L. O. 214.

RECEIVER.

1. *Action of ejectment.*—Where a receiver is in possession of leasehold property, and an action of ejectment is brought by the tenant in fee against the tenants in possession, the Court will allow the action to proceed, provided there has been no wilful contempt committed by the party bringing the action. *Gowar v. Bennett*, 34 L. O. 328.

2. *Formâ pauperis.—Error in order of committal.*—The 88th Order of May, 1845, does not apply to the appointment of a receiver, but merely to his taking possession of the property. Therefore notice is not required that an application will be made for the appointment of a receiver under the 84th of the same orders.

A special affidavit of means will not be required from a person defending in *formâ pauperis*, if it appears from a counter affidavit that such defendant is only entitled to property upon which the plaintiff has a lien, (although the lien is not mentioned in the bill,) and to an unavailable share in the supposed residuary estate of a deceased relative.

If, on the return to a writ of *habeas corpus*, it appears that the order of committal misstates the date of the decree, for non-obedience to which an attachment has issued, the prisoner is entitled to be discharged, and he will not be detained for the costs of an irregular motion subsequent to his committal. *Dresser v. Morton*, 34 L. O. 509.

3. *Security.—Guarantee association.*—The Court cannot accept the bond of a guarantee association as a security for a receiver, though with the consent of all parties to the cause.

The Court will not appoint a receiver without security, even though without salary. *Manners v. Furze*, 35 L. O. 170.

4. *Master.*—The Court, with the consent of all parties, will appoint a receiver without a reference to the Master. *Manners v. Furze*, 35 L. O. 367.

5. *Injunction.—Yearly tenant.*—In order to obtain a special injunction against a yearly tenant, occupying land in the possession of a receiver of the Court, by virtue of an agreement with such receiver, it is not necessary that a bill should have been filed against such tenant, although he was no party to the original suit. *Walton v. Johnson*, 35 L. O. 391.

See *Injunction*, 1.

REPLICATION.

Notice of filing.—Where notice of the filing of a replication is not served, pursuant to the 23rd Order of October, 1842, the replication ordered to be taken off the file. *Johnson v. Tucker*, 34 L. O. 228.

REVIVOR.

Outlawry.—The Court will not allow a plaintiff in an original cause to be turned into a defendant to the revived cause, upon the ground of his being an outlaw, without proof of his having become an outlaw, subsequently to the filing of the original bill, or by consent. *Whittaker v. How*, 34 L. O. 358.

RIGHT TO BEGIN.

Where both parties petition for a re-hearing, the original petitioner will be allowed to commence at the subsequent re-hearing. *Jones v. Mitchell*, 34 L. O. 564.

ROLLS PAPER.

Transfer of cause.—A cause cannot be transferred from the Lord Chancellor's paper into that of the Master of the Rolls by an order of the Lord Chancellor only, without an order of the Master of the Rolls. *Gordon v. Lowe*, 34 L. O. 420.

SERVICE OF BILL.

1. *Affidavit.—Variance.*—The affidavit of service of a copy of the bill must not vary from the title of the bill by the omission of a name of a defendant, unless the omission is supplied by the words "or others." *May v. Prinsep*, 35 L. O. 172.

2. *23rd Order of August, 1841.*—Where the executors of one of several next of kin filed a bill against the administrator for an account and payment of their distributive share, it was held that the other next of kin might be served with a copy of the bill, pursuant to the 23rd Order of August, 1841. *Knight v. Cawthron*, 35 L. O. 391.

SERVICE OF SUBPŒNA.

1. *Application to have cause set down.—Defendant absconding.*—Where plaintiff is unable to serve a subpœna on one of four defendants, but has proceeded with the suit against the other three, and has obtained an order for the cause to be set down as if fit for hearing, on the Clerk of Records and Writs refusing to grant his certificate, the Court will take upon itself to order the Registrar at once to set the cause down for hearing. *Mores v. Mores*, 35 L. O. 143.

2. Where a copy of subpœna was inclosed in a letter to the defendant, the receipt of which was acknowledged by him, it was not considered a sufficient service of the subpœna to enable the plaintiff to enter an appearance under the 29th Order of May, 1845. *Gathercole v. Wilkinson*, 35 L. O. 192.

SUBSTITUTED SERVICE.

1. In a suit, the object of which was to render a judgment obtained in an action at law a charge upon the real estate of the defend-

ant who was out of the jurisdiction, the Court refused to allow substituted service of subpoena upon a person who had been the defendant's attorney in the action, but who was not proved to be still his agent. *Cope v. Russell*, 34 L. O. 250.

2. Substituted service of the subpoena to appear and answer on the solicitor of a defendant, that defendant being out of the way and his place of abode unknown, was refused on motion made for that purpose. *Cope v. Russell*, 34 L. O. 277.

SUPPLEMENTAL SUIT.

Executors.—To a supplemental suit for the purpose of bringing before the Court the representatives of a residuary legatee, the execu-

tors are necessary parties though parties to the original bill. *Egg v. Devey*, 34 L. O. 565.

TRUSTEE ACT.

The Court will not entertain an application under this act in the first instance. *Anon.* 35 L. O. 213.

[These Equity Practice Cases, as will be observed, are entirely taken from the original Reports in the *Legal Observer*. It was found that to incorporate them with the Digest from the other Reports would occupy too much space, to the exclusion of matters of immediate importance. The other Practice Cases were given at page 169, *ante*.]

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Lord Chancellor.

After Trinity Term, 1848.

APPEALS.

| | | | |
|------------|-------------------|----------------------|-----------|
| S. O. | { Hodgkinson | Hodgkinson | } appeal |
| | { Ditto | Jackson | |
| Af. M. Tm. | Alfrey | Alfrey, | ditto |
| | { Wilson | Wilson | |
| S. O. | { Ditto | Ditto | } appeal |
| | { Ditto | Foster | |
| | Watts | Hyde, cause by order | |
| | Birch | Joy, 4 causes | appeal |
| | { Joy | Birch | } ditto |
| | { Sturgis | Ditt | |
| | { Attorney-Gen | Monro | |
| | { Ditto | Bannerman | } appeal. |
| | { Ditto | Makant | |
| | Robinson | Robinson | ditto |
| | Skipper | King | ditto |
| | Moore | Cleghorn | } ditto |
| | | 5 causes | |
| | Dawes | Betts | ditto |
| S. O. | Dk. of Beaufort | Morris | ditto |
| S. O. | Christ's Hospital | Grainger | ditto |

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

| | |
|------------------------------|--|
| Smith v. Hoare, | demr. |
| Jones v. Earl of Charlemont, | dem. |
| S. O., | Hickson v. Mainwaring, 2 causes. |
| { | Ladbrooke v. Smith |
| { | Browne v. Ditto |
| | Earl of Belcarras v. Johnson, exons. pt. hd. |
| | Battershall v. Bishop of Winchester, fur. dirs. and costs. |
| | Jenkins v. Briant, fur. dirs. and petn. |
| | Adey v. Arnold, fur. dirs. & costs. |
| | Roberts v. Roberts. |
| | Green v. Norton, 5 causes, fur. dirs. and costs. |
| | Rackham v. Siddall, cause. |
| | Palmer v. White. |
| | Jones v. Evans. |
| | Salomons v. Connop. |
| | Sturges v. Arrowsmith. |
| | Jones v. Walker. |

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| Pemberton v. Wilcocks. |
| Dobson v. Lyall, fur. dirs. and costs. |
| Greenwood v. Groom. |
| Westbrook v. Knight. |
| Johnson v. Tucker. |
| Pocock v. Johnson, fur. dirs. and costs. |
| Vulliamy v. Vulliamy. |
| Pawsey v. Hale, exons. |
| Jowett v. Board, fur. dirs. and 2 petns. |
| Skarf v. Soulbly. |
| Rodney v. Rodney, 3 causes. |
| Wood v. Smith, fur. dirs. and petn. |
| Askew v. Davidson, fur. dirs. and costs. |
| Gray v. Webb. |
| Robinson v. Sollory |
| Law v. Urlwins, exons. |
| Knight v. Morrall |
| Harrison v. Ditto |
| { Knight v. Nugent |
| { Walker v. Marquis Camden, fur. dirs. and petn. |
| { Walker v. Stephens, 2 causes. |
| { Cesarini v. Cesarini, suppl. bill. |
| { Bryan v. Twigg, exons., fur. dirs. and 4 petns. |
| { Cook v. Fynney, rebg. |
| { Wilkinson v. Hartley. |
| { Ashburner v. Wilson, fur. dirs. and costs. |
| { Johnson v. Bates. |
| { Bruin v. Knott, 3 causes ditto. |
| { Short, Freeman v. Roberts, 4 causes, fur. dirs. |
| { Cookson v. Leo. |
| { Brown v. Smart. |
| { Hodgkinson v. Gilbert. |
| { Grisewood v. Justice. |
| { Horrod v. Taylor. |
| { Ward v. Shepherd, fur. dirs. and costs. |
| { Smith v. Meyrick, 3 causes. |
| { Harris v. Collug, fur. dirs. and costs. |
| { Colpas v. Westbrook, ditto. |
| { Burley v. Evelyn. |
| { Pinnell v. Simpson. |
| { Short, Brooke v. Brooke. |
| { Wilde v. Spencer. |
| { Dunston v. Dunston, fur. dirs. and costs. |
| { Short, Read v. Palmer ditto. |
| { Foster v. Foster. |
| { Watson v. Hanbury. |
| { Short, Priestly v. Jewer, fur. dirs. & costs. |
| { Short, Angerstein v. Martin. |
| { Short, Dighton v. Bank of England. |

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Bruyeres v. Banister, objection as to parties.
 Sowdon v. Marriott, exons.
 Ditto v. Ditto, fur. dirs. and costs.
 Flight v. Ditto, ditto.
 S. O. G., Constable v. Threshire, 2 causes.
 Mackenzie v. King.
 Spicer v. King.
 Mangles v. Dixon.
 Heseltine v. Edgar.
 Shaw v. Cox.
 Sterry v. Clifton, etecon.
 Kidwell v. Smith.
 29th June, Helps v. Rhodes.
 Garbett v. Whitehead, fur. dirs. and costs.
 30th June, Careless v. Edwards.
 Ditto, Lockhart v. Reilly.
 1st July, Gray v. Earl of Limerick.
 Baldwin v. Baldwin.
 3rd July, Soden v. Payne.
 Ditto, Wallis v. H. R. Sarel.
 Ditto, Taylor v. Taylor.
 Ditto, Norbury v. Gooley.
 5th July, Smith v. Manning.
 Ditto, Cannon v. Cooper.
 8th ditto, Egremont v. Lee.
 Ditto, Cox v. Taylor.
 Ditto, Norton v. Hinxman.
 S. O. Watts v. Jefferyes.
 10th July, Lee v. Egremont.
 Coombes v. Brooks, exons.
 Eyre v. Green, exons., 2 sets and fur. dirs.
 Sanderson v. Brewer.
 15th July, Attorney-General v. Mosley.
 Gibson v. Guthrie.
 15th July, Whitfield v. Parfitt.
 Short, Joad v. Ripley, fur. dirs. and costs.
 17th July, Spooner v. Payne.
 Tichener v. Tichener.
 Coleman v. Mister.
 Short, Hosking v. Russell.
 Ditto, Attorney-Gen., v. Johnson.
 Mayor of Rochester v. Lee, fur. dirs. and costs.
 Brown v. Milne.
 Short, Lott v. Howard.
 21st July, Anderson v. Strather, 2 causes.
 Jackson v. Courtier, fur. dirs. and costs.
 Short, M'Cormack v. Lamb.
 Morgan v. M'Collum.
 Short, Dresden v. Bessy.
 Ditto, Morrison v. Walton.
 Millbank v. Stevens, fur. dirs. and costs.
 { Warden v. Ashburner } ditto.
 { Lodwick v. Ditto } ditto.
 22nd July, Jones v. Constantino.
 Ditto, Smith v. Sutcliffe.

The following Causes from the VICE-CHANCELLOR OF ENGLAND'S List to be transferred on the 27th of June (by order).

| | |
|--|----------------|
| { Hill v. Sanders } | fur. dirs. and |
| { Whitehall v. Ditto } | costs. |
| Fitch v. Frend, | ditto. |
| Lawson v. Meek. | |
| Burton v. Taylor, fur. dirs. and costs. | |
| Alcock v. Field. | |
| Brooke v. Warwick, fur. dirs. and costs. | |
| Claridge v. Pemberton, | ditto. |
| Haffenden v. Wood, | ditto. |
| Norton v. Gordon, | ditto. |
| Martindale v. Hayton, | ditto. |
| Potter v. Waller, exons. 2 sets. | |
| Cookson v. Lee. | |

Roberts v. Roberts.

Guepratte v. Young, 2 causes.

Berkeley v. Swinburn, 6 causes, fur. dirs. and costs.

Barrett v. Stockton and Darlington Railway, fur. dirs.

Arnold v. Arnold.

Pigot v. Pigot,

Nash v. Holland.

Penny v. Watts, 2 causes.

Vice-Chancellor Bigham.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Johnson v. Addams, demr.
 Ellis v. Cowne, pt. hd.
 24th June, Hudson v. Barry.
 Ditto, Fry v. Fry, fur. dirs. and costs.
 Waller v. Urquhart, ditto.
 { Gowing v. Burge.
 { Ditto v. Sullivan.
 Letts v. London & Blackwall Railway Company, etecon. exons.
 North v. Morloy.
 Saunders v. Scott.
 S. O. G. { Perks v. Painter.
 { Ditto v. Ditto.
 Cole v. Coles.
 { Clarke v. Clarke.
 { Ditto v. Ditto.
 Bracey v. Earl of Scarborough.
 { Savery v. Savery }
 { Ditto v. Wise }
 Harrison v. Round, fur. dirs. & costs.
 Attorney-General v. Lucas, exons.
 Hunter v. Daniel.
 Phillips v. Sarjeant, fur. dirs. and costs.
 Hepworth v. Heslop, exons. and fur. dirs. and costs.
 Mainwaring v. Beevor.
 10th July, Rees v. Gwynne.
 Ditto, Johns v. Dickenson.
 Short, Salisbury v. Salisbury, fur. dirs. & costs.
 Hedges v. Jefferies, ditto.
 Willetts v. Willetts, ditto.
 { Woodroffe v. Woodroffe } fur. dirs.
 { Ditto v. Ditto }
 { Ditto v. Ditto, cause.
 12th July, Pearsall v. Lewis.
 19th July, Moore v. Darton, 3 causes.
 Short, Horton v. Pickin.
 15th July, Garlick v. Llewellyn.
 17th July, Lawrence v. Kent.
 { Garth v. Bell }
 { Ditto v. Maclean }
 Morgan v. Davies, fur. dirs. and costs.
 19th July, Royal Exchange Assurance v. Natusch.
 Hulton v. Hepworth.
 21st July, Clay v. Rufford.
 Smith v. Tebbitt.
 22nd July, Giuks v. Hair.

The following Causes from the VICE-CHANCELLOR'S List intended to be transferred on the 27th of June (by order).

| | |
|---|--|
| Dinsdale v. West. | |
| Chambers v. Artis, fur. dirs. and costs. | |
| Holland v. Teed, exons. | |
| Webb v. Burley, fur. dirs. and petition | |
| Attorney-Gen. v. Phillips. | |
| Edgar v. Heseltine. | |
| Cleaver v. Sloan, 4 causes, fur. dirs. and costs. | |
| Hopkin v. Hopkin. | |
| { Nixon v. Taff Vale Railway } exons. | |
| { Ditto v. Acraman. } | |

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 8, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

CONSOLIDATION OF THE CRIMINAL LAW.

JUDGING from the frequent ill success of those who have the most extensive experience in the matter, the drawing of acts of parliament would seem to be amongst the most difficult exercises of the human mind. Whether the difficulty is inseparable from the construction of instruments of this nature, or that those who undertake the task proceed, for the most part, without system, or upon a system essentially defective, admits of discussion, but it seems clearly desirable, that the profession of a parliamentary draughtsman should be more cultivated and encouraged, and the business of framing acts of parliament placed upon a footing in some degree commensurate with its public importance. Perhaps it would be still more desirable, that those whose province it is to originate acts of parliament, and who endeavour to obtain the sanction of the legislature to measures in which the interests of the community are extensively involved, should begin by having a clear and well-defined comprehension and understanding of their own intentions, and of the precise objects they have in view. It is to be feared that this, which is the only foundation for useful legislation, is too often wanting, and hence spring many of the anomalous and contradictory enactments which encumber the statute books.

These observations are suggested by what has recently occurred, in reference to

a subject, second in importance to none that can be brought under the consideration of Parliament, namely, the revision and consolidation of the Criminal Law of this kingdom. Our readers are no doubt aware, that several Commissions have been appointed from time to time, for the purpose of inquiring into and reporting upon this branch of the law; and that amongst the Commissioners were found the names of persons of great professional and public eminence. The Criminal Law Commission now existing, bears date on the 22nd February, 1845, and the Commissioners, during the present Session of Parliament, have submitted a fourth report, together with the draft of a bill for the purpose of consolidating into one statute a digest of the written and unwritten law relating to the definition of crimes and punishments. The bill itself, as originally introduced, contained only four clauses, but the schedule which was annexed consisted of 24 chapters, containing 854 distinct articles; and occupied no less than 165 pages. This bill, the first practical result of the labours of a learned Commission, apparently the produce of great labour and industry, the concocting and fashioning of which had cost no inconsiderable amount of public money, was entrusted to Lord Brougham for presentation to the House of Lords, and his lordship introduced it by an elaborate oration, which occupied several hours in the delivery, and in which eloquent allusion was made to nearly every possible subject—legal and political—except the consolidation of the Criminal Law. The bill was read a first time,

and ordered to be printed on the 12th of May. It was accordingly printed, extensively distributed, and those persons who were impressed with the great importance of the subject had partially succeeded in mastering the details of this monster bill, when, for some reason which we are anxious to hear explained, the measure introduced with so much "pomp and circumstance," was withdrawn from the consideration of parliament, and "Criminal Law Consolidation Bill (No. 2,)" was substituted! The second bill was read a first time on the 6th June, and has now been printed. It differs materially, both in form and substance, from its predecessor, and, so far as we can judge of a bill of such magnitude, in point of construction, at all events, it is a decided improvement. The bill now before parliament contains eight clauses, two of which are the ordinary formal enactments confining the operation of the act to England, and giving power to alter, amend, or repeal the act during the session in which it passes. The other clauses are in substance as follow:—

The 1st section, after reciting that it is expedient the Criminal Law now in force should be arranged and consolidated in one statute, defining the offences and specifying the punishments, proceeds to enact:—That the schedule to the act annexed shall be deemed and taken to be parcel of the act, and that the analysis and all the chapters of such schedule, and all the sections of such chapters, and all the articles of such sections, and the headings, summaries of contents, and numbers thereof respectively, shall all be deemed and taken to be enacted by the present act, as if such analysis and every of such chapters, sections, articles, headings, summaries of contents, and numbers, had been expressly and in terms therein recited, with the usual words, and in the usual forms of enactment, or declaration, or proviso, as the case may be; and that from the passing of the act every one guilty of any offence described in or defined by the said schedule, shall be liable to such punishment as is therein appointed in respect of such offence.

The 2nd section proposes to enact:—That after the passing of the act, the rule of law whereby a married woman charged with the commission of any crime is presumed, in case her husband be present at the time, to have acted under his coercion, unless it appear that she did not so act, and all rules of law contrary to the provisions of chapter 1 of the said schedule shall be, and the same are, thereby repealed and annulled.

The 3rd section declares:—That after the passing of this act no person shall be liable to prosecution by any indictment or information in respect of any offence not included in the schedule, or in any act to be made and passed after the passing of this act.

The 4th section provides:—That nothing herein contained shall exempt any offender from prosecution by indictment or information in respect of any offence not capital created by any private, local, or personal statute, or by any act or enactment of a public nature where the same is to continue in force for a limited period only, or from any proceeding by information or otherwise, to recover or enforce any pecuniary penalty or specific forfeiture by virtue of any statute, or from any proceeding in which any magistrate or commissioner is or shall be empowered to exercise any summary jurisdiction without trial by jury.

The 5th section provides:—That as regards any offence perpetrated before the first day of *August* in the present year, 1848, and also as regards any offence in part perpetrated by any act done before that day, and which shall be completed or consummated on or after that day, the offender shall be punishable as if this act had not been passed.

And the 6th section declares:—That notwithstanding anything in the act contained, persons charged with *theft* shall continue to be tried in the same manner and be subject to all the same rules of procedure as if the act had not been passed.

The schedule of the new bill occupies 14 pages, in addition to those which the schedule to the first bill filled, (in the whole 179 pages,) and each chapter is preceded by a summary, the convenience of which for purposes of reference is indisputable. A new section is introduced with regard to the degrees of crime and their definition, and the whole measure is in various respects materially altered.

How such extensive and important alterations could have been found necessary so speedily after the introduction of the bill, and not previously foreseen, we are at a loss to understand. Can it be possible that the bill first introduced was an incomplete draft, to which the Commissioners had not given their sanction, and which was submitted to the House of Lords merely to afford Lord Brougham an opportunity of letting off a speech on the subject of law reform? This has been suggested as an explanation of the somewhat remarkable circumstance to which we have above alluded. We are amongst those who consider that no labour can be misapplied, and hardly any expense can be incurred, which should be considered too great in rendering the laws complete and effective. Still, there are notoriously many thousands of the inhabitants of this kingdom, the faithful subjects of her Majesty, in abject poverty and extreme destitution, and if any man has the power, in the indulgence of a thoughtless spirit, or for the gratification of personal objects, to put the

public to the cost of printing and circulating a bill which it is not intended or understood should ever be discussed in the shape it is introduced to the legislature, it is a gross abuse of the privilege of a member of parliament, and a wanton waste of the national funds.

There are many features in the bill now submitted to parliament deserving of the attentive consideration of the profession and the public, to some of which we shall hereafter take occasion to advert. At present we shall confine ourselves to a reference to the 6th section of the bill, as printed above. That provision appears to us to relate exclusively to a matter of procedure; and the Commissioners in their report, when submitting the draft of this bill, expressly state:—"We reserve all provisions which, however intimately connected they may be with this branch of the Criminal Law, and necessary to be adapted to it, properly belong to the branch regarding procedure."

It may be, upon a more careful perusal, we shall find, that an enactment as to the manner and the rules under which persons charged with theft are to be tried, does not properly belong to the branch relating to procedure; but at present this provision strikes us as anomalous and misplaced, and more properly comprehended in the bill which, as we understand, the Commission is directed to prepare, for consolidating the law of procedure.

NISI PRIUS SITTINGS AFTER TERM. STATE OF BUSINESS.

THE Cause List was not complete on the eve of our last publication, and we were therefore prevented from stating the number of causes set down for trial at Guildhall. We find that in the Queen's Bench the total number of causes for trial at the present sitting was 187, of which 117 were remanets. In the Common Pleas, 137 causes were set down, of which 69 were remanets, and in the Exchequer the entry of causes for trial amounted to 245, of which 134 were remanets. In all these cases, as our readers understand, the venue was laid in London. The gradual increase of the number of causes made remanets, both in London and Westminster, is a matter deserving of serious attention, and if it should continue, must speedily lead to an extension of the time appropriated to the *Nisi Prius* Sittings after Term. The statute 1 W. 4, c. 70, s. 7, limits the

Sittings in London and Middlesex to 24 days, exclusive of Sundays, after Hilary, Trinity, and Michaelmas Terms respectively, and six days, exclusive of Sundays, after Easter Term. Seventy-eight days during the year, are therefore appropriated to the *Nisi Prius* Sittings after Term, but it is manifest this period is insufficient. The facilities afforded by railway travelling render it more convenient, and far more economical, to try a jury cause in the metropolis, rather than at an assize town on circuit, and the *Nisi Prius* business in town increases, whilst the circuit business annually diminishes. A few years back the causes tried at the *Nisi Prius* Sittings during Term, only comprehended actions on bills and notes, and for goods sold, which were either undefended or of the simplest character. It has now become the practice to try heavy complicated actions during Term, and it is not unusual to have the same cause occupy one of the judges for two or three days consecutively during Term. This is extremely inconvenient to the judges themselves, and to both branches of the profession. The object of those who preside in the Courts in encouraging the trial of heavy causes in Term, is to prevent the increase of arrears in the Sittings after Term. The expedient, however, has not been successful, for the arrears continue to increase. Special Jury Causes are not in general tried at the Sittings in Term, and the number of Special Jury Causes remaining for trial in all the Courts has become so large, that at the present sitting at Guildhall, Lord Denman reversed the ordinary arrangement, and appropriated the first week of the Sitting to the trial of Special Juries, instead of commencing with the Common Jury Causes, and appointing the Special Jury trials for the last week of the Sitting. It is quite clear that this arrangement will not enable his lordship to try a greater number of cases during the twelve days in which he sits at Guildhall, and if the proportion of Special Jury Causes remaining to be tried at the close of the Sitting be diminished, the Common Jury Causes remaining for trial will have increased in the same proportion. The only remedy for the evil is, the devotion of a greater number of days to the trial of Jury Causes, and, in the opinion of many considerate persons, such an alteration is not practicable, unless it be accompanied by an augmentation of judicial strength from the addition of a sixth judge to each of the Courts of Common Law.

CERTIFICATE DUTY OF ATTORNEYS.

THE motion of Lord Robert Grosvenor, for leave to introduce a bill to repeal this tax, stands for the 18th inst.—Tuesday week. The Chancellor of the Exchequer has not yet brought forward his *Budget* to the House of Commons, but we are glad to observe that last week he was able to make a preliminary statement, from which it appears that the *deficit* of nearly 3½ millions, as the account stood in February, is already diminished to half a million. So long, however, as there is any deficiency whatever, we can hardly expect that the profession will be relieved. The total expenditure for the ensuing year is estimated at 54½ millions. Large as is the Certificate Tax to the individuals who pay it, the gross amount forms but a small item (about a six-hundredth part) in this vast sum, and might easily be provided for in a re-arrangement of the Stamp Duties.

An old correspondent on this subject still suggests a small duty on writs and proceedings in the Courts of Law and Equity, and on Railway proceedings in parliament. He has, we understand, communicated his suggestions to the Chancellor of the Exchequer and Lord R. Grosvenor. On the part of the profession there may be no objection to this course, but the principle of a direct stamp tax on the administration of justice having been formally abolished by the legislature by 5 G. 4, c. 41, any attempt to revive the tax for the express purpose of relieving the attorneys would not be tolerated.

PROPOSED AMENDMENTS IN CHANCERY PRACTICE.

A MEMORIAL has been presented to the Lord Chancellor by "The Metropolitan and Provincial Law Association," setting forth,—

"That the Metropolitan and Provincial Law Association is a Society entirely composed of attorneys and solicitors in England and Wales (now consisting of 900 members), and that the objects for which it was formed are, the promotion of the interests of the suitors and the better and more economical administration of justice, the removal of the many and serious grievances to solicitors and through them to the suitors, and for maintaining the rights and increasing the usefulness of the profession.

That the members of this society, and they believe the whole profession of the law, feel that the present system of proceedings in the Court of Chancery, and the mode of conducting business in its officers, is injurious to the suitors and the community; and they would earnestly

impress on your Lordship the necessity of making extensive improvements therein, and respectfully to suggest some alterations and amendments which they are convinced could be readily accomplished and would prove highly beneficial.

That in the year 1840, a Petition was presented to the Honourable the House of Commons by a large number of the members of the profession, from which the following are extracts:—

"That the delay and expense attendant on proceedings in the Chancery Court are so great as effectually to close its doors against all, except the richer classes of the community.

"That the expense (which arises principally from the delay) is so serious as to render it imperative on the profession to prevent as far as possible the institution of suits for amounts much under 1,000*l.*

"That, therefore, while at Common Law, rights of small amount can without impropriety be submitted to legal decision, a very large and important section of the community (*viz.*, persons interested in trust property of amounts under 1,000*l.*) are left without the protection of the law; and for them there is absolutely no Equity Court in operation.

"That owing to this defect of our judicial institutions, not only is individual wrong inflicted without redress on this class of society, but frauds as to trust property, offences against the most confidential relations, are actually encouraged by law, because permitted to pass with entire impunity."

"That the Court of Chancery presents the single instance in the history of the country of a great national establishment, altogether stationary as to the number of those coming within its operation, the suitors of the Court having been as numerous 100 years ago as they are now; and that the defects of the Courts have as your petitioners believe become fixed, from the entire insufficiency of the institution to meet the wants of the people.

"That your petitioners are convinced that no effective improvements can be introduced into the Equity Courts, unless the duty be assigned to the judges of superintending, controlling, and regulating the functions of the Court and its officers, and that to impose such duties with effect it is essential that there should be given to the judges powers commensurate with them.

"That your petitioners therefore appreciate as of the higher value the provision introduced into the bill now before your Honourable House, giving powers for those purposes to the judges of the Court.

"That as regulations of this kind require to be made with great deliberation, and of necessity must from time to time be amended, your petitioners would humbly submit whether these powers should not be permanent instead of being granted only for a short period of years.

"That your petitioners humbly hope that in the representations which they have made of the importance of rendering the proceedings in equity more expeditious and cheap, it will be felt by your honourable house that they are advocating improvements of the greatest importance to the interests of the suitors and of the community; whilst at the same time your petitioners freely admit that they believe these improvements will also in the end be advantageous to their own body, from the conviction that the interest of the solicitor is in all these questions identified with that of his client."

That the bill referred to was passed, as your memorialists believe, in some degree in consequence of the facts stated in the said petition; and that though its operation was confined to five years, it has since been made perpetual, and that the Lord Chancellor with the concurrence of the Master of the Rolls and Vice-Chancellors, or any two of them, has now absolute power over both the practice and offices of the Court; and as your memorialists would most humbly and respectfully suggest, the Lord Chancellor has also thrown upon him a co-extensive responsibility of seeing that all proper and necessary improvements and alterations are made.

That though several useful amendments have been made under the said acts, yet that compared with the extent of the evil, they have been unimportant; and that your memorialists regret to say that the allegations of the petition alluded to, are almost equally as true now as they were when the petition was presented.

That there are a great variety of matters which the experience of your memorialists as practitioners would propose for amendment: and that your memorialists would beg to suggest the heads of some of such matters, not presuming to enter into full details unless your lordship should desire it.

That in these suggestions, and all amendments in points of *practice*, your memorialists would wish to take as a rule the plan of opening new methods of procedure without abolishing the old, further than may be found to be essentially necessary; such new methods to be by way of alternative, and not by way of substitution, thus leaving it to experience to determine the comparative value of each method. They would also respectfully suggest that the practice of the Common Law Courts in many instances might be usefully introduced into the Court of Chancery. (For instance, the present process of enforcing equity orders requiring so many repetitions of personal notice, frequently renders the process nugatory.)

That there is a great number of other matters which your memorialists could submit for the improvement of the procedure of the Court, but that your memorialists would beg in the first instance particularly to suggest the following amendments, believing them all to be of considerable value.

I. With regard to Practice.

1. That when all parties consent, the Courts

of Equity should be at liberty to exercise a *jurisdiction on petition* in all cases whatsoever, so as to supersede the necessity of bill, answers, and evidence on interrogatory.

[Your lordship's act of last Session, allowing trustees to pay money into Court, and then creating a jurisdiction on petition, has established the plan here proposed in those cases wherein the trustee hopes by partial submission to screen a breach of trust, and in which therefore its application was probably most questionable.]

2. That the practice of allowing *special cases* for the opinion of the Court as established by Courts of Law by the Statute 3 and 4 Wm. IV. c. 42, s. 25, should be extended to Courts of Equity, in which Courts it is as much if not more needed.

3. As a consequence that the practice of the Courts compelling in all cases *enquiries for parties or taking accounts*, should be greatly modified.

4. That a primary jurisdiction should be given to the *master* in all cases of *equitable account* in which the accounting parties consent to submit to such jurisdiction; and that such jurisdiction should be either *absolute* (except subject to an appeal) or a jurisdiction to entertain the matter without order of reference, but subject to *confirmation* and *further direction* by the Court.

4. The same principle may be usefully applied to all that class of cases, in which a reference to the master is almost of course, such as *compromising suits*; arrangements when the parties interested therein are not *sui juris*; proposals for *marriage of wards*, and for *sales by private contract, power for parties to bid*.

[The latter practice, first applied to the letting, setting, and managing by receivers, and lately introduced into lunacy and extended there, has been of great benefit.]

Also primary jurisdiction for the appointment of *new trustees* where there is no power of new appointment in the instrument creating the trust or none capable of being exercised.

6. Also primary jurisdiction to *approve maintenance and guardian for infant*.

7. Also to grant *stop orders on funds in Court*; and to make such other orders as may be expedient in cases where parties consent.

8. To take the consent of *married women* to payments out of Court to their husbands.

[With regard to consent where married women or infants are interested, the masters are by the present scheme of the Court peculiarly the parties to protect them; and your memorialists would propose that all consents for married women and children should be binding if the master by his signature should sanction such consents.]

II. With regard to the Despatch of Business in the Offices.

1. To establish a thorough system of *super- vision of the offices* so as to detect delays and negligence there, and to supply to the officer the present want of all motive to exertion;

and to secure that there shall be a sufficient staff in every department for the due discharge of the official business.

2. To require all *official documents* to show on the face of them the *date* they were spoken, and when delivered out.

III. *With regard to the Mode of transacting Official Business.*

1. To consolidate the record, affidavit, subpoena, and report offices, and provide that all documents now filed in the examiner's and register's office be filed there; and to alter the practice as to filing records, pleadings, examinations, and affidavits, so as to establish one record office for the Court in which the bill, answer, and all the other proceedings in one cause, (not the bill and answer only as at present,) including affidavits and other evidence, petitions, orders, reports, and all other official documents, may be filed chronologically in a separate and distinct form, or bound in a separate and distinct volume, and be so indexed by the name of the testator as well as by plaintiffs' and defendants' names, that public reference may be easily had thereto.

2. To require *publication of accounts* at Accountant-General's, similar to the unclaimed dividend account which parliament has required from the Bank of England.

3. To dispense with useless forms in the orders of the Court, and particularly with all *orders of course* (which in your memorialists' view, are not only indefensible, but absurd,) and also with all the ordinary directions repeated in all money orders,—in all orders appointing receivers—in decrees directing usual accounts of testators' estate—for reserved bid- dings, and on sales, and to curtail the introductory part of orders on petition and motion, and on further directions.

4. To dispense also with a great variety of other needless and expensive forms, at least when parties consent, such as production of original wills in Court, setting down causes, confirmation of reports, double or even treble petitions to get out of Court married women's monies, subpoenas to hear judgment, bills of revivor and common supplemental bills (where at law suggestions on roll answer the same object), &c., &c.

IV. *In the Subordinate Judicial Department.*

1. To authorize and direct the masters to *act for one another* in case of *illness* or occasional absence.

2. As to the taxing masters, to apply the general orders, 76th, of April, 1828, and 76th, of November, 1831, as to taxation, in case the parties differ (which order has practically been a dead letter, because the Courts or Registrar have not acted on it), to all cases of costs ordered to be paid by one party to another, and to require the taxing master in equity to tax as the common law masters do, without any order of reference, where both parties consent (extending the principle of 125th order of May, 1846.)

V. *As to the Banking Department of the Court.*

1. To require (as was done under the Slave Compensation Act, and is done in Ireland) the Accountant General to invest and accumulate dividends from time to time, when once ordered (without application by the parties from half-year to half-year.)

2. To dispense, as is done by Accountant-General in Bankruptcy, with powers of attorney (which are only necessary to pass legal estates), and to require him to act on letters or such other authority as may be sufficient in law to bar the party, the solicitor of the party verifying such authority.

[According to the present practice there is no evidence given to the Accountant-General that the party signing the power is the party entitled to receive the money under the order.]

3. To allow money to be *paid into Court* (as the Courts of law do) without any order, and also to be invested, as is now done with money paid under the Legacy Act.

4. To have the orders on which Accountant-General acts, or an office copy of them filed with him.

5. To remove the great hardship on parties arising from Canterbury probates and administrations, being always required for the Accountant-General.

6. To get a branch of the Bank of England established in Chancery Lane for the convenience of the suitors, in the same way as has been done at the Court of Bankruptcy.

VI. *As to Evidence.*

1. To enact the common law rules as to admission of documents.

[Rules to this effect were prepared many years ago by members of your memorialists' body, and submitted to, and are still in the hands of the judges.]

2. To enact rules to make the giving of evidence compulsory in bankruptcy and other cases where proceedings are on petition, by allowing exhibition of interrogatories or *vivâ voce* examination.

3. To extend the appointment of Masters Extraordinary to London, and to reduce the fee on the appointment of a Master Extraordinary.

4. To allow affidavits to be used on the hearing of causes; at least subject to the discretion of the judge.

And your memorialists would further respectfully state that the body of solicitors are anxious to give every assistance in their power to your lordship and the other judges in improving the Court of Chancery.

It was formerly the practice of the judges of the Court to consult the six clerks and clerks in Court as the solicitors and representatives of the suitors of the Court, on all changes in practice; and your memorialists would, lastly, very respectfully submit to your lordship on behalf of the suitors of the Court, that it is now, since the abolition of that office, due to

the suitor, that the solicitors of your lordship's Court, as the members, and the only members of the profession personally known to, and the parties personally selected by the suitors of the Court, and the only parties personally intrusted by them as their confidential agents, should in future be consulted on such changes."

"The memorialists pray that, if the duties of his lordship will permit, he will be pleased to investigate the matters of this memorial, and will receive a deputation of the memorialists thereon; or that he will appoint other parties to investigate the same and report thereon to his lordship, and if his lordship shall see fitting, that his lordship will entrust them to carry out the objects of this memorial so far as the same shall appear wise and desirable.

The memorial is signed, on behalf of the association by the following members of the Equity Sub-Committee of the association:—

| | |
|--------------------|-------------------------|
| JOHN S. GREGORY, | <i>Chairman.</i> |
| JNO. J. J. SUDLOW, | } <i>Vice-Chairmen.</i> |
| JNO. HOPE SHAW, | |
| EDWIN W. FIELD, | |
| M. D. LOWNDES, | |
| G. BOWER, | |
| THOS. HOLME BOWER. | |

NEW BILLS IN PARLIAMENT.

LORD BROUGHAM'S BANKRUPT LAW CONSOLIDATION.

THIS bill has just been printed, and occupies 110 folio pages, consisting of a short act of six sections, referring to a schedule of 343 articles, and an appendix of forms marked A. to R., inclusive.

It commences with the constitution of the Court. The Commissioners are to be raised to the rank of judges, one of whom is to be the Chief Judge, with a salary of 2,500*l.*; and there are to be four other judges in London, and twelve in the country. There is to be a Chief Registrar, with 4 other Registrars, in London, and 12 in the country. Next come provisions relating to the Accountant in Bankruptcy, the Master, the Official Assignees, Clerks, Messengers, &c.

The other chapters of the schedule are intended to comprise a complete code of the Bankrupt Law, the details of which it is at present unnecessary to state, as we understand the bill will not be proceeded with this Session, but is now printed for future consideration.

The clauses relating to practitioners and costs, which form an important chapter, will receive early attention.

LETTERS OF MR. JUSTICE BLACKSTONE.

To the Editor of the Legal Observer.

THE lives of distinguished men, of all other reading, is perhaps the most amusing, and would be still more interesting and instructive, if more of what may be called the "inner life" could be developed. Instead of this, biography is, in many instances, and those in which fuller information would be most valuable, a mere skeleton of dates—a dry narrative of overt acts—indicating little else than that the individual was born, and in due time died. This penury of knowledge is occasionally corrected by the care of some "honest chronicler" like Boswell, or by the help of epistolary correspondence, in which the writer is made to pourtray his own character, as in the case of Mason and Hayley, who, in their lives of Gray and Cowper, have contrived to make the most pleasing letters in the whole compass of English literature the means of making us familiarly acquainted with the private story of those poets. But what is true of biography in general, is perhaps more emphatically true of the lives of English lawyers. How little is known of the personal history of Littleton, or Selden, or even of Blackstone! Of this last conspicuous writer we have little other information than that he was the son of a tradesman—was educated at the Charter House and Oxford—a law lecturer—a barrister of moderate practice—and finally, a judge. If he had not, fortunately for his own reputation and for English jurisprudence, written a book, he would by this time have sunk among the large number of respectable commonplace magistrates, and been forgotten. Where there is so much of darkness, the least ray of light is important; and in the scarcity of materials for becoming acquainted with the private life of this admirable author, even a scrap of his writing which tends to reveal it may be acceptable. Under this impression, I communicated to you, when the *Legal Observer* was first published, one of several letters of the learned commentator, which accident had placed in my hands; and I now, after the lapse of too many years, send you the remainder of my small collection, in the hope that these papers may prove interesting, at least to the lawyer who has given his days and nights to the volumes of Blackstone; and that other persons who possess similar MSS. may be induced to

yield them to the rational curiosity of the public. S.

SIR,—I have ye favour of yours of ye 3d instant & in answer to one part of your Enquiries have enclosed two Papers of Votes, by wch you will be enabled to see ye Progress of our Scheme of Amendment more largely than I cd otherwise give it you. It remains only for me to add, that we were neither ignorant of nor unprepared for an Opposition from ye Quarter of Abingdon; wch as they intended to ground upon ye Hazard of ye monies lent on ye Faith of Parliament upon ye Turnpike at Kingston-Bagpuz, and ye Impossibility of maintaining two Roads from Faringdon to London (Considerations of no small weight) we were obliged to guard against as effectually as we could. We therefore entirely omitted in our Petition any mention of ye comparative Length of ye two Roads, but proved only before ye Comce, ye Badness of ye Ways, ye Decay of ye Markets, and ye terrible Condition of ye Farmers starving in ye Midst of Plenty. This effectually silenced all Opposition, and tho' Mr. Morton in Duty to his Constituents expressed his Jealousy of our future Designs, yet he owned we had so artfully managed ye matter, that he did not know how or where to begin an Opposition; in wch it wd be necessary for him to show that ours would be a nearer and a better Road, before he could prove his Abingdon Road in Danger. The Bill will be brought in next week, & we hope will meet with no Rubs; nevertheless, we are preparing ourselves (by speaking to Friends &c) against all Contingencies. Your Neighbour, W—n—s—d, & I are hand & glove upon this Occasion, & hold a very regular Correspondence. Your other Neighbour is universally laughed at & despised for his selfish, inconsistent, & ridiculous Conduct. He has had ye Meanness to refuse paying his mighty Subscription, because ye Scheme was altered without his Participation. The only Instance of ye Kind among all ye Subscribers!

Having dwelt thus long upon a Subject, now ye uppermost in my Thoughts, I have less Room to enlarge upon ye Scenes of social Delight & connubial Happiness wch are just ready to open in our Family. The swelling Hoops, ye majestic Sacques, ye Silks, ye Laces, & ye Holland Sheets that have been bought upon this Occasion, I leave Miss B. to describe to Miss R. but to you (my Guide, my Counsellor, & Friend) I must talk rather in ye legal Strain. I found it necessary a little to alter ye proposed Scheme, for ye Lady has a small Estate in Fee, wch was agreed to be absolutely vested in Mr. B. I therefore proceeded by way of lease and release from her to Mr. B. in trust for herself till Solemnizacon & afterwards to his own Use absolutely discharged of all Trusts whatever. And then (ye Release being 3 partite) proceeded to ye Covt as settled between You &

Me, to wch I added a Clause of Acceptance in lieu of Dower. on her part, wch is ye only thing in wch I ventured to differ from your Judgment. It was, however, (by my Desire) perused by Mr. Wilbraham, & I had ye Satisfaction to have it come back without any Alteration as to Form or Substance, with only ye Addicon of one or two synonymous Words, wch I take to be only a Method of shewing he had read it over. Ban has transcribed it, but was cursedly out of humour at not being named a Trustee; ye Lady chusing Mr. Ellis St. John, & my Uncle pitching upon me. But all this is *entre Nous*. Mr. B * * * gave me a Fee upon ye Occasion much beyond my Deserts, & what, upon these (and all other) occasions, generally rises higher; my expectations also. I believe I shall exceed Yours, when I tell you it was a cool Hundred.

As for Law in ye Courts of Westminster, it is grown a perfect Stranger. Not one Determinacon of any Moment during ye whole Term; & ye Courts (except ye Chancery) not sitting above an hour in ye morning. I believe our Clients mistook ye Title of an Act that passed last Sessons, & instead of *Abbreviation*, read it, "An Act for ye *Annihilation* of Michas Term." I am sure it was so understood by honest Cardanus Rider, who in his British Merlin, vulgo diet. Almanac for 1752, has entirely omitted any Mention of it in ye Calendar.

You ask if I shall travel your Way the ensuing Xtnas. Alas! I have no Horse in Oxford, & you know me too well to think I wd ride a strange one. It is true, I might easily send for my own; but besides that it is really inconvenient for me to leave Oxford, You know I hate any thing but a Turnpike Road in ye Winter. Duty, you will say, calls me; but since I cannot in this point carry my Inclinations to my Duty, I shall contrive to bring my Duty to my Inclinations; and do not question but I shall easily obtain Leave to defer my formal Visit till ye next Lent Vacation. However, when I come to Oxford, (where I must be ye 17th instant,) you may depend on seeing me at S * * * * in my usual Xtnas Shape of a brace of Almanacs, of wch you have already accepted. My Compliments, & more, my real good Wishes, attend You and my Cousin. I remain,

Dear Sir,

Your most obliged and obedt
humble Servt

London, 7 Dec., 1751. W BLACKSTONE

Will not a Line from You do as well as a personal Conference in ye Affair of Stonhouse & Smith? I would not, methinks, give You a Trouble to avoid one myself. The Judges are bringing in a Bill with regard to ye Attestacon of Devises, in ye room of that they rejected last Sessons. It is a Thing loudly called for. The Alarm Bell is ringing; & a hundred Suits are preparing on ye Doctrine they established for Law, in ye case of Anstey and Dowser, which you heard argued.

[We have other letters of the learned Commentator, which we hope shortly to submit to our readers, addressed—"To Seymour Richmond, Esq."]

The preceding letter was, no doubt, addressed to the same gentleman.—ED.]

COPYHOLD FINES UNDER BUILDING LEASES.

To the Editor of the Legal Observer.

SIR,—In your remarks on Copyhold Fines, inserted in the Legal Observer of the 10th instant, you state it to be the uniform practice of lords of manors to accept fines on admission not exceeding two years' *ground-rent* reserved on a building lease; and you express strongly the opinion that to charge a higher fine would be unjust towards the copyholder.

Having had my attention pretty fully turned to copyhold matters for many years, I was much surprised at your statement of the practice, having myself found it to be that of charging a fine on the *improved* value, without taking into consideration any leases granted by the copyholder.

With respect to the alleged injustice of the charge, I would draw your attention to the following grounds which induce me, and I trust will on consideration induce you, to think that there is no injustice in requiring a fine on the improved value:—

The ownership in copyhold property is divided into two parts,—the one that of the lord, who is the freeholder subject to the rights of the copyholder; and the other that of the copyholder, who holds subject, amongst other liabilities, to the payment of a fine of two years' improved annual value, on certain events. Each of the interests in the property is the subject of purchase, the value being based on the pecuniary advantage each interest will *legally give*, and a copyholder, on making a purchase, deducts the value of the *known* rights of the lord, thus purchasing a partial interest at a price proportioned to the real value of that interest.

If such be the case, with what justice can the copyholder attempt, by granting a building lease to another person, perhaps a friend or a son, to deprive the lord of a portion of his interest in the copyhold property?

With equal justice might a lessee who has taken a lease subject to the delivering up all buildings and improvements at the end of his lease, claim a right by granting a building lease to another person, to deprive the landlord of the improvements by additional buildings.

In both cases the rights of the respective parties are known, and are dealt with in the market according to their real value; so that no prudent man need be injured by his purchase.

The hardship on the builder no more bears on the case than would that to which a man

who took a 90 years' building lease of a lessee who had himself only a 10 years' lease, would be subjected, but to which his own imprudence alone would subject him.

In a few words, there is no injustice on the copyholder, who knows what are the lord's rights when he purchases,—who gives a price proportioned to the *real* value of the interest he purchases, and who ought not by his own act to have the opportunity of defrauding the lord of his rights; and if any hardship is experienced by the builder, it solely arises from the greatest want of common prudence on his own part.

With regard to the public policy of allowing the ownership of property to be split into different parts, that matter does not bear on the subject of your remarks; for even if it be admitted that a power to enfranchise or commute the lord's rights in copyholds would be advantageous, still justice would require that a sum proportioned to the legal interests of the lord should be paid him; and with equal reason, whilst those rights continue, the lord ought not, I think, to be accused of acting *unjustly* because he enforces them.

I believe that on the manors of the Duchy of Cornwall, as well as on those of the Duchy of Lancaster, every copyholder can obtain an enfranchisement of his copyholds; but whether such be or be not the case, the fines are mere matters of calculation, based on the real interests of the parties; and the Council of the Duchy, it appears to me, only seek to obtain for the lord the fair value of his rights, which the copyholder must have known to exist, for the liability to which he obtained a proportionate reduction in his purchase money, and which every person purchasing an interest under the copyholder for building purposes might have readily ascertained.

R. R.

The New Rule laid down by the council of the Prince of Wales is far from clear, but my reading of it is this:—Assuming the customary fine to be two years' improved rent, that the class of building would warrant a term of 90 years, that the building has been erected 20 years, and that the improved rent is 200*l.* per annum, I consider that the fine would be 25*l.* 13*s.* 7*d.*, viz., 400*l.* discounted at 4 per cent. for 70 years.

C.

[We understand, from information obtained at the Duchy Office, that on a rack-rent of 100*l.*, the fine on death on the new principle would be 19*l.*—60 years of the term being unexpired;—that if 50 years were to come, 28*l.* would be demanded; if 40 years 40*l.*; if 30 years 60*l.*; and if 20 years not less than 90*l.*—ED.]

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1848.

COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

Form and Rights of Action..

State and distinguish eight of the most usual forms of action.

State some of the advantages the action of debt possesses over an action of assumpsit or covenant, where the defendant lets judgment go by default.

What is the material difference between the actions of detinue and trover.

In an action of ejectment, where a party wishes to defend as landlord, or devisee, or mortgagee, what steps should he take to be let in to defend?

Jurisdiction.

Where a plaintiff brings an action in the Superior Courts that ought to have been brought in the County Court, under the statute for the more easy recovery of small debts, what steps should the defendant take to deprive the plaintiff of costs?

Suppose a judge of a County Court should have exceeded his jurisdiction, in trying a cause he ought not to have tried, what steps must be taken?

Interlocutory Proceedings.

Where a christian name in the declaration varies from that in the summons, within what time must the objection be taken?

And what is the general rule as to the taking advantage of an irregularity by the opposite party?

Where a defendant changes the venue upon the usual affidavit, what steps should the plaintiff take to bring the venue back?

Evidence.

If a party to a cause call a witness to prove the execution of any written instrument, without first requiring an admission of the due execution of such instrument, what will be the consequence of such omission?

How can you obtain the testimony of a witness about to quit the country?

When will a deed prove itself?

Trial.

Where a plaintiff takes a record down for trial, but the cause goes over by reason of the judge not reaching it, or not being able to try it, can the defendant move for judgment as in case of a nonsuit?

If not, what remedy has he to make an end of the cause, where the plaintiff does not proceed with it?

Within what period must application be made for a new trial?

How is advantage to be taken of a cause of defence arising after action brought?

Costs.

If a cause be tried by a special jury and no judge's certificate obtained, that the cause is a

proper one to be tried by a special jury, how will that affect the question of costs?

EQUITY AND PRACTICE OF THE COURTS.

Jurisdiction and Principles of Equity.

State the principal heads of equitable jurisdiction.

What is the equitable principle upon which a legatee is entitled to file a bill against an executor?

Describe the nature and object of a bill of foreclosure.

Explain the difference between an issue at law, and a case for the opinion of a Court at Law;—and for what purpose a Court of Equity directs the one or the other.

If a trustee of funded property become lunatic, by what means may a new trustee be appointed in his place; and how is a transfer of the stock to be effected?

Can the Court interfere, if such lunatic trustee be also beneficially interested in the fund to any and what amount?

In the case of a will of doubtful construction, how are the executors to proceed so as to avoid personal responsibility?

If a partner become lunatic, does the lunacy occasion a dissolution of the partnership?

Practice.

What is the first proceeding in a suit in equity? and mention some of the varieties of that proceeding, by which it is adapted to different objects.

What are the modes of defence to which a defendant may resort, according to the circumstances of his case?

If a plaintiff obtain an order to amend his bill without prejudice to an injunction, within what time from the date of the order must he amend his bill?

What will be the consequence to the plaintiff if he neglect to amend within the allowed time?

Is there now any difference in the times of procedure in town causes and country causes?

If a defendant is likely to abscond, to avoid answering a bill, will the Court interfere? and if so, in what way, and upon whose application?

If the plaintiff's solicitor, having the carriage of a decree, delay the prosecution of it, has the defendant any, and what, remedy?

CONVEYANCING.

Estates.

A. devises lands to *B.* who is his heir-at-law. Does *B.* take by descent or purchase, and has the law on that subject undergone any and what recent alteration?

Explain the terms particular estate,—reversion,—remainder.

Explain joint-tenancy and tenancy in common, and point out their distinguishing incidents.

Explain the origin of copyholds, and by what statute was the further creation of manors prohibited?

When were fines and recoveries abolished,

and how may an entail be barred at this day :
1st, by tenant-in-tail in possession ; 2ndly, by
tenant-in-tail in remainder ?

Has the law imposed any particular restriction
on the accommodation of real or personal
estate, and for what period may either be now
accumulated, and the beneficial interest therein
postponed ?

Deeds.

Explain the ordinary method of conveying
real estate from vendor to purchaser.

Does a deed of grant of hereditaments in pos-
session require more than one stamp, and if in
your opinion it requires more, explain how it
comes to do so.

State briefly the ordinary form and construc-
tion of a mortgage deed of real estate.

Define what is meant by the legal term
“ covenant.”

Wills.

Previously to January, 1838, how many wit-
nesses were required to a will of real estate—
how many to a will of personal estate—and
what is the present law in regard to each ?

Does real estate purchased by a testator sub-
sequently to the execution of his will, pass by
such will ? and has any alteration of the law in
that respect taken place, and from what time ?

Marriage Settlements.

On a proposed marriage where the intended
husband is seised in fee of real estate of the
annual value of 1,000*l.*, and the intended wife's
fortune 10,000*l.*, what would be the usual and
proper settlement of the wife's fortune, and
settlement of the husband's real estate ?

On a settlement of personal estate only,
where the whole or principal fund is derived
from the wife, what is the usual and proper
settlement of her fortune, and that of her in-
tended husband ?

Sales.

In a sale of real estate by auction, what con-
ditions as to title, title-deeds, assignment of
outstanding terms and otherwise, ought to be
inserted to anticipate difficulties on the part of
an unwilling purchaser ?

On a sale of leasehold estate, or beneficial
lease, what conditions ought to be inserted with
regard to the title of lessor and lessee, or either,
or both ?

[We have, as usual, for the purpose of faci-
litating the study of these Questions, arranged
the Common Law and Equity in the order of
an action and suit, and the Conveyancing
Questions have also been placed under the
several heads of Law and Practice, to which
they relate.

The Bankruptcy and Criminal Law Ques-
tions will follow in an early number.]

BARRISTERS CALLED.

Trinity Term, 1848.

LINCOLN'S INN.

Charles Wycliffe Goodwin, Esq.
John Hagan, Esq.
Edmund Swetenham, Esq.
John Eveleigh Wyndham, Esq.
Robert Vaughan Williams, Esq.
Henry Minshull Stockdale, Esq.

INNER TEMPLE.

9th June, 1848.

George Mellish, Esq.
Robert Remmett, Esq.
James Tomlin, Esq.
James William Brooke, Esq.
Thomas Balston, Esq.
Samuel Boteler Bristowe, Esq.
George William Lee Plumtree, Esq.

16th June.

John Josh. Arthur Shakespear, Esq.
Henry Edward Bennett, Esq.
Josh. Houston Brown, Esq.

MIDDLE TEMPLE.

26th May 1848.

William Makepeace Thackeray, Esq., Trin.
Coll., Cambridge.

Edward Harrison, Esq.

George John Stickland, Esq., B. A., Trin.
Hall, Cambridge.

John Balguy, jun., Esq., B. A., Merton Coll.,
Oxford.

Thomas Curson Hansard, Esq.

16th June.

Charles Sumner, Esq., M. A., Balliol Coll.,
Oxford.

William Lucas Jones, Esq.

John Buckmaster, Esq., B. A., St. Mary
Hall, Oxford.

William Hickin, Esq.

Thomas O'Sullivan, Esq.

James Olliff Griffiths, Esq.

GRAY'S INN.

14th June, 1848.

Daniel Harnett Stack, Esq.

Thomas Worthington Barlow, Esq.

Leon Arnaud, Esq.

[This appears to be a smaller number than
usual of calls to the Bar, but sufficient, no
doubt, to supply the demand, as well for actual
practice, as for future judgments.]

PROGRESS OF LAW BILLS IN PARLIAMENT.

House of Lords.

NEW BILLS IN PROGRESS.

Joint-Stock Companies. For 2nd reading.
Clergy Offences. For 2nd reading.—Bishop of London.

Amendment of Criminal Law. In Select Committee.—Lord Campbell.

Unnecessary Actions Prevention. In Committee.—Lord Campbell.

Bail by Coroners for Manslaughter. In Committee.—Lord Campbell.

Bankruptcy Law Consolidation. For 2nd reading.—Lord Brougham.

Removal of Poor. In Committee.

Criminal Law Consolidation. For 2nd reading.—Lord Brougham.

Copyhold Enfranchisement Extension. In Committee.—Lord Chancellor.

Independence of Parliament. For 2nd reading.—Lord Brougham.

Declaratory Suits. For 2nd reading.—Lord Brougham.

Game Certificates. Passed.

Public Health. In Committee.

Commons' Inclosure. For 3rd reading.

Administration of Justice out of Sessions. (No. 1). For 2nd reading.

Administration of Justice on Summary Convictions. (No. 2). For 2nd reading.

Protection of Justices. For 2nd reading.

House of Commons.

NEW BILLS IN PROGRESS.

Incumbered Estates Ireland. Re-committed.
Agricultural Tenant-right. For 2nd reading.—Mr. Pusey.

Roman Catholic Relief. In Committee.—Mr. Anstey.

Parliamentary Proceedings Adjournment. For 2nd reading.

To Establish an Appeal in Criminal Cases. For 2nd reading.—Mr. Ewart.

Exempting Small Tenements from Rates.—Mr. P. Scrope. For 2nd reading.

Parliamentary Electors Rates.—Sir De Lacy Evans. To be reported.

Highways. In Committee.

Remedies against the Hundred. Sir W. Clay.—For 2nd reading.

Vacating Seats of Insolvent Members.—For 2nd reading.—Mr. Moffatt.

Borough Elections. In Committee.

Metropolis Police. In Committee.

Prisons. Passed.

Administration of Criminal Justice. In Committee.

Poor Relief; Infant Poor Education; Parish Debts; Poor Law Officers.—For 2nd reading. Mr. Buller.

Piracy.—For 2nd reading. Mr. M'Gregor.

Assignment of Policies. Mr. Fagan.

NOTICES OF NEW BILLS.

Imprisonment before Trial.—Lord Nugent.
To Prevent Bribery at Elections.—Sir J. Pakington.

Game Laws.—Mr. Bright.

Rights of Outgoing Tenants.—Mr. S. Crawford.

Friendly Societies.—Mr. F. O'Connor.

Extending Election Franchise.—Mr. Wyld.
Repeal of Attorneys' Certificate Duty. Lord R. Grosvenor. 18th July.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Moss v. Buckley. June 16, 1848.

ORDERS OF MAY, 1845, (NO. 56).—SERVING COPY OF TRAVERSING NOTE ON PASSIVE DEFENDANT.

The Court will order personal service of copy of traversing note upon a defendant who is within its jurisdiction, but who does not defend either by a solicitor or in person.

Mr. Smythe, on behalf of the plaintiff, moved for leave to serve the defendant personally with a copy of the traversing note filed by the plaintiff. The defendant was within the jurisdiction of the Court, but did not defend the suit either by a solicitor or in person. A motion similar to the present had been unsuccessfully made before Vice-Chancellor Knight Bruce, under the 56th of the General Orders of May, 1845. His Honour, upon the authority of *Anon.* 11 Jur. 28,^a considered that the case of

a defendant remaining passive was not met by that order, nor by those Orders (19th and 21st of Oct., 1842,) to which it referred. The 56th Order of May, 1845, was in the following terms:—"A traversing note having been filed, a copy thereof is to be served on the defendant against whom the same is filed, in the manner directed by the 19th and 21st of the Orders of the 26th of Oct., 1842, for the service of documents not requiring personal service." The 19th and 21st Orders of the 26th of October, 1842, relate respectively to service in proceedings where a party sues or defends by a solicitor or in person. The case of a defendant remaining passive did not seem to have been contemplated, and had not been provided for by any of the above-mentioned orders.

The Lord Chancellor observed, that the present case was certainly omitted in the orders; but that his lordship's general jurisdiction would enable him to grant the required leave, irrespective of the General Orders of the Court. Leave was accordingly granted.

^a *Anderson v. Stather*, S. C. This case was also decided by Vice-Chancellor Knight Bruce, and is reported at length in 33 L. O. p. 211.

His Honour's decision was confirmed by the Lord Chancellor.—*Ibid.* p. 328.

Rolls Court.

Lord Wellesley v. Lord Mornington. May 15 and June 1, 1848.

INJUNCTION—CONTEMPT.

An injunction restraining A. from doing certain acts, did not in terms extend to A.'s agent or servant. B., a servant of A., having done acts which A. was enjoined not to do, Held, that a motion could not be directly made to commit B. for a breach of the injunction; but Semble, that B. might be committed for his contempt of the Court in assisting A. to commit a breach of the injunction.

In this case Mr. Roupell and Mr. Heathfield moved to commit Mr. Batten, steward to Lord Mornington, for the breach of an injunction, restraining Lord Mornington from cutting timber upon certain trust estates, or granting leases of them upon the receipt of fines.

Mr. Wilcock for Mr. Batten, objected, that the injunction did not extend to persons acting as Lord Mornington's agents or servants, but was confined to Lord Mornington alone.

Mr. Roupell referred to *The Imperial Gas Light Company v. Clarke*, 1 Young Exch. Rep. 582, 583, and *Casemager v. Strode*, 1 S. & Stu. 381.

Lord Langdale, however, expressed his opinion, that the application could not be granted in the form asked, as Mr. Batten had committed no direct breach of the injunction, which in its terms was confined to Lord Mornington alone.

Subsequently the application was renewed in the form of a motion, that Mr. Batten should show cause why he should not be committed for his contempt of the Court.

Mr. Roupell, Mr. Heathfield, and Mr. Turner, (who appeared for the trustees of the property on which the breach of the injunction took place,) contended, that Mr. Batten being cognizant of the order of the Court, was guilty of a contempt of the Court, by aiding Lord Mornington to do any act which, if done personally by him, would be a breach of the injunction; although from the want of any words expressly extending the injunction to Lord Mornington's agents, Mr. Batten's acts were not technically a breach of the injunction. They referred to *Lechmere Charleton's case*, 3 M. & C. 317, and the cases there cited; *Littler v. Thompson*, 2 Beav. 129; *Willis v. Daniel*, 1 Anst. 36; *Elliott v. Hulmarak*, 1 Mer. 302; *Exparte Clarke*, 1 R. & M. 563; and *Broad v. Wickham*, 4 Sim. 511, and a case of *Attorney-General v. Talbot*, not reported, before Lord Cottenham.

Lord Langdale expressed a clear opinion, that Mr. Batten was bound to take notice of the injunction, and abstain from assisting Lord Mornington in the breach of it, whether it expressly extended to Lord Mornington's agents or not.

But as Mr. Walpole and Mr. Wilcock, who appeared for Mr. Batten, did not dispute his liability, but confined themselves to explanations of his conduct, with the view of showing

that he had not intended to commit any contempt of the Court, but conceived that the acts in which he had assisted were not prohibited, it did not become necessary formally to decide the point.

Vice-Chancellor of England.

In re Sharpe. May 5, 1848.

STAT. 10 & 11 VICT. c. 96.—REFERENCE TO THE MASTER.—TRUSTEES.—LEGATEES.

A legacy distributable amongst six legatees had been paid into Court by the trustees of a will, desirous of being discharged from the trusts, under the 10 & 11 Vict. c. 96, and proceedings were being prosecuted by some of the legatees for the payment of their shares of the legacy. Notwithstanding such proceedings, an order made, allowing two other of the legatees to proceed separately to obtain their shares, they paying all the expense attendant thereon, and the order also being without prejudice to the rights of the legatees to institute any suit in respect of any interest they might have under the will.

THIS was a petition presented under the Trustee Act, 10 & 11 Vict. c. 96. The testator Sharpe, by his will, left a sum of 2,000*l.* for the benefit of his nephews and nieces who should be living at the decease of his wife, or the lawful issue of those then dead as his wife should appoint, in default of appointment equally amongst them, share and share alike. The widow died in September, 1847, without having made any appointment, and the parties now entitled were six in number, and an application was made to the trustees of the will for payment, but they thought proper to get rid of the trust under the 10 & 11 Vict. c. 96, and accordingly paid the 2,000*l.*, with the privity of the Accountant-General into the bank in the matter of the trust, filing at the same time the ordinary affidavit pursuant to the provisions of the act. This petition was now presented by two of the parties interested in the fund, praying that a reference might be directed to the Master for the purpose of proving their title and having the money paid out.

Mr. Malins appeared for the petitioners, and stated that an exactly similar petition had been presented to Vice-Chancellor Knight Bruce by some of the other parties interested in the fund, but the proceedings under that petition promised to take so much time his clients were anxious to go in before the Master and prosecute the matter themselves, being at the same time willing to bear the whole of the expense.

The Vice-Chancellor said, it appeared to him that in a case like the present such an order ought to be made as would at once effectually divide the whole of the money amongst those interested, and that various applications for the same fund, entailing unnecessary expense, ought not to be allowed.

Mr. Malins said, that under the late act of 53 Geo. 3, this would not have occurred, but

that under the act of Victoria there was nothing to prevent the legatees from proving their title separately. The trustees, by taking advantage of the act, had relieved themselves from all responsibility, so much so that it had been decided that it was not even necessary to serve them with notice of an application to take the money out of Court.* The 2,000*l.* was a distinct trust, and by getting the receipt of the Accountant-General they were effectually discharged.

The Vice-Chancellor said, that various questions had arisen on the act, and he understood that the Lord Chancellor intended to issue certain rules upon it.^b It would be very desirable that he should do so. He did not think that it was ever the intention of the legislature that trustees should be at liberty to deal with trust property so as to place each individual *cestui que trust* in a worse situation than if the act had never been passed. From what was stated on the petition he was not satisfied that the trustees had effectually discharged themselves from the trusts of the will, and he should not make the order without mentioning it to the Lord Chancellor to ascertain his lordship's opinion on the subject.

May 8. The Vice-Chancellor, this day, said, he had consulted with the Lord Chancellor, and he was of opinion that the act was not intended to take away any right from persons beneficially entitled to property paid into Court by trustees. He should, therefore, make the order, but without prejudice to any right which the legatees might have to institute a suit under the will, and it might be a question whether the executors ought not to be parties to such a suit.

Queen's Bench.

(Before the Four Judges.)

Dyer v. Cowley. Trinity Term, 1848.

ASSUMPSIT.—GOODS SOLD AND DELIVERED.—GOODS BARGAINED AND SOLD.—DISCRETION OF THE COURT.

Two animals were sold by A. to B., and 5*l.*, part of the purchase-money, paid at the time by B., and by mutual agreement the animals were given into the custody of C. till B. paid A. the remainder of the purchase-money, and the animals died whilst in the possession of C. The declaration contained a count for goods sold and delivered, and one on an account stated; and the case being left to the jury, they found a verdict for the plaintiff, and leave was reserved by the judge for the defendant to enter a nonsuit.

Held, that the proper form of action was assumpsit for goods bargained and sold; but inasmuch as there was evidence for the consideration of the jury, and they had found their verdict for the plaintiff, the

Court, under all the circumstances of the case, discharged the rule.

THIS was an action for goods sold and delivered, and on an account stated. Plea, *non assumpsit*. The defendant purchased of the plaintiff two leopards. At the time the bargain was made and the price agreed upon, 5*l.*, part of the purchase-money, was paid by the defendant to the plaintiff, and the arrangement between the parties was, that the leopards should be given into the custody of a person named Gregory for a few days, till the remainder of the purchase-money was paid by the defendant. The leopards afterwards died while in the custody of Gregory, and before the purchase-money was paid. The case was tried before Wilde, C. J., on the Western Circuit, when his Lordship took the finding of the jury on all the facts of the case, and then directed a verdict for the plaintiff, with leave reserved to the defendant to move to enter a nonsuit. A rule was subsequently obtained on a statement of all these facts, together with the direction of Lord Chief Justice Wilde thereon.

Mr. *Prideaux* showed cause. The leopards having, by consent of both parties, been delivered into the custody of Gregory, he must be considered not solely as the agent of the plaintiff, but the agent of the plaintiff and defendant. There was a qualified parting with the possession of the leopards on the part of the plaintiff, and if he had parted with the possession so as to divest himself of all claim to lien, then all the authorities show that this form of action can be maintained. *Salter v. Woollams*,^a *Dodsley v. Varley*.^b

Mr. *Phim*, contra. The count in the declaration having been framed for goods sold and delivered, and not for goods bargained and sold, the evidence does not support the count. The plaintiff still retained the right of possession, and could have resumed possession of the animals if the defendant refused or was unable to pay the remainder of the purchase-money. It is clear the plaintiff never lost his common law right of lien. The cases on this subject are collected in Smith's Mercantile Law, 445, and show that the evidence does not support the present form of action.

Lord Denman, C. J., now delivered the judgment of the Court. This was a reference to the Court from the decision of the judge at *nisi prius*. The facts found are in the nature of a special case, and this course cannot be pursued without the consent of both parties. If either party intend to adopt a different course, he is bound to withhold his consent at the time. If the facts found leave the case imperfect, and a new trial becomes necessary, then the process which has been employed to bring the case under the consideration of the Court, in a different form, and thus to save expences to the parties, will only have the effect of driving those parties to a further expenditure. What the judge reports the parties to have agreed to must be binding upon them, and in this case

^a See *Ex parte Martin*, Leg. Obs. vol. 35, p. 561.

^b These rules have since been issued, see Leg. Obs., June 17, 1848.

the Chief Justice, having taken the opinion of the jury on the fact of payment, directed a verdict to be entered for the plaintiff, giving leave to the defendant to move to enter a nonsuit if the facts proved should not appear to the Court sufficient to support the verdict on the declaration as it is now framed. They would support the verdict if the Court should think them sufficient to lead the jury to one conclusion. There are strong reasons capable of being urged on both sides of the question, and we cannot avoid exercising our discretion on this subject. We cannot enter a nonsuit, for there are facts on which the plaintiff has a right to take the opinion of the jury. We could grant a new trial, but then the plaintiff would apply for and obtain leave to amend his declaration, and he would then amend it, so that the facts which have been distinctly proved would be sufficient to sustain the declaration. We are unwilling to do anything which would give a new cause of expense. We do not see the advantage of that, and so we are of opinion that the verdict must stand. We are aware that the defendant must thus lose a benefit to which he is strictly entitled, but that is the consequence of his not taking the proper means to secure his advantage. We cannot say we regret the result, because he would otherwise obtain a triumph over the justice of the case through a trifling mistake of form.^c

Rule discharged.

Court of Eschequer.

Goodchild v. Leadham and another, executors of George Allen, deceased. Jan. 25, 1848.

AMENDMENT OF WRIT AND SUBSEQUENT PROCEEDINGS BY ADDING ANOTHER DEFENDANT—STATUTE OF LIMITATIONS.

This Court will not after plea allow an amendment of the writ and all subsequent proceedings, by adding the name of another person as defendant in order to save the Statute of Limitations as to such person.

Query, *Would such an amendment be allowed in the writ before declaration?*

A rule had been obtained calling on the plaintiff to show cause why an order of Mr. Baron Alderson, authorizing the plaintiff, on payment of taxed costs, to amend the writ of summons and all subsequent proceedings, by adding the name of Maria Allen, executrix, as one of the defendants, with liberty to the defendants to plead *de novo*, or to apply to the Court to rescind such order, should not be rescinded.

It appeared that the testator, who was indebted to the plaintiff on Sept. 26, 1841, in 53*l.* 19*s.*, died in June, 1847. Inquiries had since been made (*whether from the defendants was doubtful upon the affidavits, certainly not*

from their attorneys,) for the purpose of ascertaining the names of the executors, and the plaintiff's attorney had received in June, immediately after the decease of the testator, a circular letter (to the effect that the business would be carried on for the benefit of the widow,) signed by the above-named defendants only as executors of the deceased, which circular letter one of the defendants had since admitted was sent by him to the other defendant. But it was also stated on behalf of the defendants, that this was done by them from a friendly feeling only to the deceased, that they never otherwise acted as executors, and that the widow, Maria Allen, was the only legal representative of the deceased. Before issuing the writ, search had been made at the Prerogative Office for a will, but no will had then been proved. Application was made by letter to the defendant (J. R. Leadham), as one of the executors, for payment of the above sum with six years' interest, together 89*l.* 10*s.*; in reply, Leadham did not deny being executor, nor did he then state that Maria Allen (the widow) was executrix of her husband, together with the present defendants. The plaintiff not being able to obtain any further information, or payment of his demand, on Sept. 27, 1847, two days before the Statute of Limitations would have operated as a bar to his claim, issued the writ against the present defendants only, who pleaded:—1. *Ne unques executor as to a part.* 2. *Plene administravit as to a part.* 3. *Non assumpsit as to residue.* Since which no further proceedings had been taken in the cause; the will having in the mean time been proved, and probate taken out by Maria Allen only, who by the said will was named executrix; power being reserved to the present defendants to prove. This was discovered within a few days of the application to Mr. Baron Alderson at chambers for the order.

Martin showed cause. After stating the facts, he observed, there were three or four cases which went the full length of saying that before the new rules, under the old form of proceeding, this amendment might have been made. He first called the attention of the Court to *Carr v. Shaw*, 7 T. R., 299; although in *Roberts v. Bate*, 6 Ad. & E., 778, an amendment by adding the name of another defendant was not allowed, for the purpose of saving the Statute of Limitations, yet in the subsequent case of *Brown v. Fullerton*, 13 M. & W. 556, 2 D. & L. 251, S. C., which was an application to amend by adding the name of an official assignee in bankruptcy as co-plaintiff. Mr. Baron Parke, in giving judgment, observed,—“It appeared that if the amendment were not made, the Statute of Limitations would be a bar to the recovery of the debt for which the action was brought. Some doubt has been entertained whether we ought to accede to this motion; but, in compliance with the precedents in this Court, upon which we have acted on several occasions, we think that the rule ought to be made absolute.” In *Rutherford v. Mein*, 2 Smith R. 392,

^c The case was argued before Lord Denman, G. J., Pattenon, Coleridge, and Erie, JJ.

the Court allowed an amendment in a special *scias* by inserting the Christian names of two defendants; that case is directly in point, and anterior to the new rules. [Platt, B. In this case Maria Allen has never been served with the writ, nor has she ever appeared; besides, what is there to amend by?] Nothing, nor was there in *Rutherford v. Mein*. [Parke, B. That doctrine applies only to misprision of clerks, and in no other case.] The case of *Brown v. Fullerton* might be taken as a rule laid down by the judges, and which ought to be abided by. Another case on the subject is *Christie v. Bell*, 16 Law J. Exch. 179, which upon principle appears decisive of this case; there Mr. Baron Parke said,—“After the passing of the Uniformity of Process Act, the judges met to consider the question of allowing amendments to be made in writs. The majority were of opinion that they ought not to exercise an unlimited power of amendment. In *Culverwell v. Nugee*, 15 L. J., N. S., Exc. 308, Alderson, B., says,—“The Court, soon after the passing of the Uniformity of Process Act, said they would not amend writs under the new statute. But the evil of not amending in the case of the Statute of Limitations convinced us that we had come to an improvident resolution, and we therefore found it necessary to retrace our steps. If the penalty be merely the loss sustained by the necessity of issuing a new writ, we have determined not to assist the party whose negligence has occasioned the error. But if the penalty consist of the loss of the entire debt, we consider ourselves bound to help the party who has committed the blunder.” In that case the amendment was made both as to plaintiffs and defendants, and there could be no real distinction between amending the proceedings by adding another defendant and by adding another plaintiff, which was frequently done. The reasoning in *Christie v. Bell* applied equally in either case.

Petersdorff, contra. The question here is, whether the party, who is an utter stranger to the suit, is to be called upon by a summons of a learned judge and to be made a party to this action. [Martin asked for whom he appeared.] He appeared to support the present rule. [The Court intimated that he ought to state for whom he appeared.] He appeared for the defendants. [Platt, B. How could his clients be affected?] On the distribution of assets, questions often arise as to the priority of writs. This was an attempt on the part of the Court to exercise a jurisdiction with reference to a party who had not in any legal form been brought before the Court. There was no instance to be met with in which the Courts had allowed the writ to be amended, for the purpose of introducing a new party as a defendant. [Alderson, B. It is ante-dating a writ as against her.] It must appear that the action was commenced four months ago, and this would materially affect Mrs. Allen, by whom the statute might now be pleaded in bar, and such decision would introduce a great hardship when money had been paid by executors. When amendments had

been allowed as in *Carr v. Shaw*, the party was before the Court. He apprehended this amendment could not have been made under the old rules. [Pollock, L. C. B. I am not aware that the Courts have ever laid down any general rule that they will allow the parties to amend to save the Statute of Limitations. Parke, B. They have never done so. Alderson, B. The rule I understood the Courts to be governed by is, that whatever you could do before the statute under the old rules, you may do now for the purpose of saving the statute.] In the addition of a plaintiff, all the parties were before the Court. But allowing that under the statute the rule laid down by the Courts upon the fact, that the parties would otherwise lose their remedy, the reason did not apply in this case, for it did not appear that such would be the result; in fact, it would not, for here the defendants had pleaded in bar, meeting the case upon its merits, and the question really was, whether the Court would bring in another party, as defendant against her will.

Pollock, L. C. B. The rule must be made absolute. The order adds another defendant, and this is proposed to be done after declaration and after plea. The amendment now proposed would not have been made under the old rules and before the statute, and the Courts have not gone further than this, that an amendment, which would have been allowed before, may, for the purpose of saving the statute, be made now. With respect to the observation of Mr. Baron Parke in *Christie v. Bell*, it is not to be taken that all the judges were consulted upon it; some of them were, and the question was much discussed; and this Court has departed from the rule only in those cases where the Statute of Limitations would impose a severe penalty upon the parties, in consequence of some clerical error or slip in the proceedings. The parties here having gone so far as they have done, and no authority being cited directly in point, I think we cannot allow the amendment. There is a great difference between the addition of a plaintiff and of a defendant, for when a plaintiff is added, it is with his own consent; but the addition of a defendant is an adverse proceeding.

Parke, B. When the act for the Uniformity of Process passed, the judges met to establish a uniform practice as to amendments, and Mr. Justice Patteson is correct in what he says in *Roberts v. Bate*, both as to principle, and also in reference to the observation in *Lakin v. Watson*, as reported in 2 C. M. R. 686, that it had been misunderstood. The principle upon which the Courts act is likewise correctly stated in *Hodgkinson v. Hodgkinson*, 1 Ad. & E. 535. I doubt whether this amendment could have been made under the old rules. The case of *Rutherford v. Mein* was before declaration. In such case I do not see the inconvenience. I am not aware of any authority when the Court would have amended in a case like the present. I quite agree with the Lord Chief Baron in the distinction be-

tween the addition of a plaintiff and a defendant, and am, upon the whole, of opinion the rule must be made absolute.

Alderson, B. I am of the same opinion. The order was made for the purpose of having this question discussed before the Court, although I was then of the same opinion as the Court is now. If the application had been made at an earlier stage of the proceedings, it might have been different. I do not say it would; but we would exercise the same discretion now as we would have done before the passing of the act. In the case of the addition of a plaintiff it does not alter the form of the proceeding. Here the plaintiffs may have a full remedy, for all that we can tell, as against the present defendants. I do not think this case comes within the rule laid down allowing amendments.

Platt, B. The real person objecting here is

the person sought to be introduced. The question is, whether the Court will introduce another person here as defendant, and deprive her of the benefit of the statute. In the case cited of the assignees the question does not arise, because in that case there was no laches, it was a mere matter of form, there was no default. So where the names have been altered the parties were the same. Here the plaintiffs have selected two parties, and it cannot be allowed that they should now alter their mind and endeavour to fix a third person. I think this would be neither more nor less than repealing the Statute of Limitations, as to the party sought to be introduced. Why should the plaintiffs have allowed all this time to pass? they bring the difficulty upon themselves. I am therefore also of opinion this rule should be made absolute.

Rule absolute.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Bankruptcy.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

• Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, p. 169, 190.]

ACTION AGAINST BANKRUPT.

Plea in bar.—*Order for protection from process under 7 & 8 Vict. c. 96, s. 28.*—Where a bankrupt defendant pleaded the granting of a final order by a commissioner in bankruptcy for protection and distribution, in bar of an action for a debt contracted before the date of filing his petition for protection, and at the trial of the cause produced in evidence an order for protection only, made under the 28th section of the 7 & 8 Vict. c. 96: *Held*, that such order was no bar to the action, as it did not fall within the provisions of the 5 & 6 Vict. c. 116, s. 10, and did not therefore support the defendant's plea. *Miles v. Pope*, 35 L. O. 297.

ADJUDICATION, NOTICE TO DISPUTE.

When too late.—A notice to dispute an adjudication served upon the petitioning creditor's solicitor the day before that appointed for showing cause against the adjudication, is too late.

Even when the bankrupt has been served with a copy of the adjudication in Ireland, he is bound by the rule of Court to give two days' notice of his intention to dispute the adjudication. *In re Delany*, 36 L. O. 57.

BANKRUPT.

1. *Party to suit.*—Where a defendant becomes bankrupt after the institution of the suit, and his assignees are made parties by supplemental bill, it is not necessary to bring the bankrupt to the hearing, by serving him with the subpoena to hear judgment. *Stahlschmidt v. Lett*, 5 Hare, 595.

2. *Concealment of property.*—*Suspicion.*—For the granting of a summons, under stat. 6 G. 4, c. 16, s. 33, to bring before commissioners a person "known or suspected" to have property of the bankrupt in his possession: *Seamble*, per Lord Denman, C. J., and Williams, J., and *held*, by Coleridge, J., that the suspicion required is that of a party applying for such summons, and not of the commissioner. *Cooper v. Harding*, 7 Q. B. 928.

See *Action against Bankrupt: Proof of Debt*, 4.

FIAT, OPENING.

Substitution of new petitioning creditor.—The term "opening of the fiat," in the Bankruptcy Act, 5 & 6 Vict. c. 122, s. 4, does not mean the reading of the fiat in Court, but the adduction of all the proof necessary to enable the Court to adjudge the party a bankrupt. The Court of Bankruptcy may, therefore, under that section, admit another creditor to prosecute the fiat, after an unsuccessful attempt to prove his debt by the original petitioning creditor.

And the creditor so admitted to prosecute the fiat is not required to prove the debt of the original petitioning creditor, but the Court ought to adjudge the party a bankrupt on proof of the debt of the prosecuting creditor; and of the trading and act of bankruptcy; and such adjudication will be valid, although the original petitioning creditor's debt was in fact insufficient, and although no order for the substitu-

tion of a fresh petitioning creditor's debt be made by the Lord Chancellor, under the 6 G. 4, c. 16, s. 18. *Kynaston v. Davis*, 15 M. & W. 705.

See *Removal of Fiat*.

JOINT-STOCK COMPANY.

Form of reference under the 7 & 8 Vict. c. 111, in the case of a bankrupt joint-stock company. *In re Forth Marine Insurance Company*, 9 Beav. 469.

LOST BILL OF EXCHANGE.

A creditor claiming upon a bill of exchange accidentally lost, allowed to prove, upon undertaking to indemnify the assignees, if any other party should establish a right to prove upon the bill. *In re Farmer*, 36 L. O. 18.

MUTUAL CREDITS.

The plaintiffs and defendants being, by agreement between them, jointly entitled to the benefits of a charter party, the plaintiffs assigned their interest in it, by indorsement, to *D.*, their creditor, at the same time giving the defendants notice of such assignment, and afterwards became bankrupts. The assignees of the charter party having sued upon it in the names of the plaintiffs, the defendants pleaded the bankruptcy of the plaintiffs, by which the right to their choses in action vested in their assignees. Replication, setting forth the assignment by the plaintiffs of their interest in the charter party to *D.*, and notice to the defendants of that assignment given by them before the bankruptcy of the plaintiffs, and that the plaintiffs sued on account of *D.* Rejoinder, (after terms to rejoin gratis and issuably had been imposed,) setting up the previous agreement between the plaintiffs and defendants, that they should share the benefits of the charter party, by way of a mutual credit between the parties, on which an account should be stated, and one demand set against the other, under 6 G. 4, c. 16, s. 50: *Held*, not issuable, and bad in substance, for at the time of the bankruptcy no mutual credit existed between the plaintiffs and defendants. *Boyd v. Mungles*, 16 M. & W. 337.

PARTNERSHIP.

See *Proof of Debt*, 3.

PETITIONING CREDITOR.

See *Fiat, Opening*.

PRIVILEGE FROM ARREST.

To what Court application for discharge must be made.—Where an insolvent, on his return from attending the Court of Bankruptcy on his own petition for protection, under 5 & 6 Vict. c. 116, was arrested under an attachment of the Court of Chancery, his application to the Court of Chancery to be discharged was held improper, and refused. *Plomer v. M'Donough*, 1 De G. & S. 232.

Case cited in the judgment: *Ex parte List*, 2 Rose, 24.

See *Sequestration*.

PROOF OF DEBT.

1. *Charter party*.—By a charter party entered into between *A.* and *B.*, it was provided that the ship, which was described to be of the burthen of 310 tons, or thereabouts, should proceed to Ichaboe, and there receive a full and complete cargo of guano, (which was to be taken to the ship's boats at the merchant's risk and expense, the captain to render all possible aid with his crew in rigging stages,) not exceeding what she could reasonably stow and carry, and therewith proceed to a port in the United Kingdom; and *B.* agreed to load the vessel, and to pay freight 4*l.* 10*s.* per ton, and 5*l.* per day demurrage. If labourers went out in the vessel, the owner to be allowed 1*s.* per man *per diem*.

Penalty for breach, 1,800*l.* Should the vessel arrive on or before a given day, *B.* was to pay 50*l.* over and above the specified freight.

An action having been brought against *B.* in April, 1845, for not providing a cargo pursuant to the charter party, judgment by default was signed on the 1st of July, and, on the 26th of November, the damages were assessed at 1,644*l.* 3*s.* 9*d.*, and final judgment was signed on the 8th of December.

On the 16th of May, 1845, a fiat issued against *B.*, under which he obtained his certificate on the 22nd of August, subject to a suspension of six months from the 8th of July.

B. having been taken upon a *ca. sa.* on the 3rd of February, 1846: *Held*, that this was not a debt or demand provable under the fiat; and, consequently, that *B.* was not entitled to be discharged from custody. *Woolley v. Smith*, 3 C. B. 610.

Cases cited in the judgment: *Goddard v. Vanderhuyden*, 3 Wils. 270; *Green v. Bicknell*, 8 Ad. & E. 701; 3 N. & P. 634.

2. *Unliquidated damages*.—The defendant entered into a charter party with the plaintiffs, by which he bound himself to supply a cargo of guano. An action was brought against him for an alleged breach, in not supplying the cargo in pursuance of his agreement, and he suffered judgment by default. Before the execution of a writ of inquiry, a fiat in bankruptcy issued against him, and he obtained his certificate with a suspension of six months. The damages were afterwards assessed at 1,644*l.* 3*s.* 9*d.*, and for that amount he was arrested: *Held*, that this was a debt not provable under the fiat, and, consequently, that the defendant was not entitled to be discharged. *Woolley v. Smith*, 4 D. & L. 469.

Cases cited in the judgment: *Goddard v. Vanderhuyden*, 3 Wils. 270; *Johnson v. Spiller* 1 Dougl. 167, n.; *Parker v. Norton*, 6 T. R. 695; *Green v. Bicknell*, 8 A. & E. 701.

3. *Solicitors who are shareholders*.—*Partnership*.—The solicitors of a railway company accepting shares in the company, are partners, and upon the bankruptcy of the company, are not entitled to prove against the company as

creditors, in competition with ordinary creditors of the company.

Quere. If solicitors who are shareholders can claim against a bankrupt company, after the debts of ordinary creditors have been fully satisfied? *In re the Tring, Reading, and Basingstoke Railway Company*, 35 L. O. 562.

4. *After arrest of bankrupt.*—A creditor who takes the bankrupt in execution after the issuing of the fiat, may prove, if it does not appear that he was aware the fiat had issued at the time the bankrupt was arrested. *In re Choates*, 36 L. O. 36.

5. *Deposit by scrip-holder.*—A scrip-holder in the company, who had paid his deposit, but who had not executed the subscribers' agreement, through the fault, as he alleged, but did not satisfactorily prove, of the company, was refused permission to prove for the amount of his deposit against the estate of the company, which had become bankrupt. *Ex parte Clarke, In re Tring, Reading, and Basingstoke Railway*, 36 L. O. 166.

PROPERTY.

See *Bankrupt*.

PROTECTION FROM ARREST.

See *Action against Bankrupt*.

REMOVAL OF FIAT.

Bankrupts were carrying on business within one district, and a fiat was taken out in another, in which one of the bankrupts resided, and had all his separate property to which the creditors must ultimately have recourse; the Court, on the application, ordered the fiat to be removed to the district where the business was situated. *In re Grylls and others*, 35 L. O. 562.

REPUTED OWNERSHIP.

1. *Assignment of debt owing to bankrupt.*—*Knowledge by debtor.*—*Agent.*—*C.*, being indebted to defendants in a sum not yet payable, and pressed by them for security, handed to them a note by which *C.*'s debtor, *S.*, promised to pay *C.* a sum exceeding *C.*'s debt to defendants. This note was not payable to order; but *C.* indorsed it when he handed it over. Afterwards defendants pressed *C.* to obtain negotiable paper from *S.*, instead of the note, which they re-delivered to *C.* for that purpose; *S.* thereupon, after the term for *C.*'s paying defendants had elapsed, took back the note, and accepted bills of exchange drawn by *C.*, exceeding *C.*'s debt to defendants, which bills *C.* desired him to give to the defendants. At the time of the acceptance, *C.* intended to commit an act of bankruptcy, which *S.* knew, but defendants did not know it. After the act of bankruptcy, *S.* delivered the bills to defendants. In trover by *C.*'s assignees for the bill, issue being joined on the plea of not possessed: *Held*, that though *S.* was not agent for defendants, the bills were not, at the time of the act of bankruptcy, in *C.*'s possession as reputed owner with the consent of the true owners, within stat. 6 G. 4, c. 16, s. 72, merely as being in *C.*'s hands; inasmuch as they were subject to the same rights

as the note, which *C.* held only, for a specific purpose as agent for defendants.

But that, nevertheless, if *S.* did not know of the assignment by *C.* to defendants of the debt due from *S.* to *C.*, the assignment was not good as against the plaintiffs; and therefore, as against them, the defendants had no title, legal or equitable, to the note, even while it remained in their hands, and consequently, none to the bills. But that, if *S.* did know, defendants were entitled to succeed on the issue. *Belcher v. Campbell*, 8 Q. B. 1.

Case cited in the judgment: *Gibson v. Overbury*, 7 M. & W. 555.

2. *Bookseller.*—Books deposited by the owner with a bookseller, kept by him as part of his general stock, and sold by him on commission, do not, on his bankruptcy, pass to his assignees, as being in his "possession, order, or disposition," as reputed owner within 6 G. 4, c. 16, s. 72.

The fact that a party has agreed to sell goods on commission, may be proved by oral evidence, though the terms as to its payment have been reduced into writing. *Whitfield v. Brand*, 16 M. & W. 282.

Cases cited in the judgment: *Mace v. Cadell*, Cowp. 232; *Joy v. Campbell*, 1 Scho. & Lefr. 336.

SCRIP-HOLDER.

See *Proof of Debt*, 5.

SEQUESTRATION.—2 & 3 VICT. C. 41.

Privilege from arrest under.—A warrant of protection under the 2 & 3 Vict. c. 41, is sufficiently signed by the *sheriff substitute* to entitle the debtor to protection from arrest in Great Britain. *Jones v. Sir Wyndham Anstruther, Bart.*, 36 L. O. 102.

SOLICITOR.

See *Proof of Debt*, 3.

SUMMONING DEBTOR.

Under 5 & 6 Vict. c. 122, s. 19.—*Speedy execution.*—*Affidavit of debt in bankruptcy.*—*Set-off.*—The plaintiff sued the defendant for goods sold and delivered, and filed an affidavit of debt in bankruptcy against him, under 5 & 6 Vict. c. 122, for 104*l.* 18*s.* 5*d.* A summons issued against the defendant under that act, but, on his making affidavit that he believed he had a good defence to the demand, was dismissed by the commissioner. The defendant then pleaded a set-off, and at the trial at the assizes proved it to the amount of 29*l.* 5*s.* Verdict for plaintiff for 74*l.* The judge granted a certificate for speedy execution, and on the 7th of August the plaintiff signed judgment, taxed costs, and issued execution. On the 21st November a rule was granted under 5 & 6 Vict. c. 122, s. 19, for entering a suggestion on the record, and for compelling the plaintiff to return to the defendant the monies paid by him under the execution, with costs; the ground being, that the plaintiff had no reasonable or probable cause for making the affidavit of debt in bankruptcy: *Held, per Curiam*, that the

motion was made too late, and by three Barons, (Parke, B., *hesitant*,) that in cases where speedy execution is granted in vacation, under 1 W. 4, c. 7, and executed before Term, the defendant must apply within the first four days of the ensuing Term, and, in other cases, before judgment has been signed and execution issued. *Quare*, whether, under 5 & 6 Vict. c. 122, the plaintiff had reasonable or probable cause for making an affidavit of debt in bankruptcy to the full amount of the defendant's original debt to him? *Smith v. Temperley*, 16 M. & W. 273.

TRADER DEBTOR'S SUMMONS.

Notice.—The form of particulars of demand and notice under the 5 & 6 Vict. c. 122, as prescribed by the General Rules and orders of Nov. 12, 1842, must be strictly complied with.

Where the particulars of demand and notice requiring payment was signed, "Octavius B. Wooller," the summoning creditor's name being Octavius Borrodale Wooller, the summons was holden to be irregular, and dismissed with costs. *Wooller v. Jewisson*, 35 L. O. 593.

Lunacy.

ALLOWANCES OUT OF INCOME.

Collateral relations.—Repairs.—Drainage.—The modern practices of making allowances out of lunatic's estates for their collateral relations disapproved and to be kept within narrow limits.

A comparatively small sum which the Master had approved as proper to be allowed out of the surplus income of the lunatic, which was very considerable, for drainage of an estate of which the lunatic was tenant for life, with remainder to his brother, was disallowed by the Lord Chancellor though no one objected to it. *Clarke, in re*, 2 Phill. 282.

CARRIAGE OF COMMISSION.

Right of strangers to interfere.—On a contest for the carriage of a commission of lunacy, that party is selected who is most likely to bring out the whole truth: subject to which a preference is given to the nearest of kin.

Applications by other parties for leave to attend the execution of the commission are in the discretion of the Court, and mere relations are not generally allowed to do so unless they have an interest.

A suggestion that a party who applied for such leave on the ground of interest, should, as the condition of its being granted be concluded by the verdict over-ruled. *Nesbitt, in re*, 2 Phill. 245.

COMMITTEE.

1. *Disallowance of money expended without authority*.—A committee, who having been authorized by the Court to expend a certain sum in rebuilding a farm-house, expended half as much again in building one of larger size on a different site, was not allowed the excess, although what he had done appeared to be

beneficial to the estate. *Langham, in re*, 2 Phill. 299.

2. *Liability to the Great Seal*.—The committee of a lunatic is personally responsible in that character to no jurisdiction but the Great Seal. And, therefore, where a committee had neglected to comply with an order in lunacy, authorizing him to make certain payments out of the lunatic's estate, in discharge of a liability which had been established against the lunatic in a suit at the Rolls, an order pronounced by the Master of the Rolls on a petition in the cause, that the payments be made "by the lunatic or the committee," on or before a given day, was discharged, on the ground that the application ought to have been made in the lunacy, and that the Master of the Rolls had no jurisdiction to entertain it. *Ames v. Parkinson*, 2 Phill. 388.

3. *Contest for committee of estate of tenant for life*.—The mother and guardian of an infant tenant in tail in remainder preferred to the nominee of the party interested in the personal estate of a lunatic tenant for life, as committee of his estate. *Webb, in re*, 2 Phill. 532.

GUARDIAN.

On an application that the solicitor of a *feme covert* might be appointed, under the 32nd Order of 1845, guardian to defend her husband, who was a lunatic, the Court required evidence that the husband and wife had no adverse interests.

The Court refused to appoint the plaintiff's solicitor guardian of a lunatic defendant.

In appointing such guardian, the Court will not interfere with his discretion. *Biddulph v. Lord Camoys*, 9 Beav. 548.

PERSONAL REPRESENTATIVE.

On the death of a lunatic, where there had been no order for a maintenance, the preceding representative offered to consent to an order for payment of a liquidated sum to the interim committee for past maintenance, in order to avoid the expense of a reference, the estate being inconsiderable. But the Lord Chancellor refused to sanction the payment, unless on the consent of the parties beneficially interested in the surplus of the estate. *Patrick, in re*, 2 Phill. 394.

SUPERSEDEAS.

Liberty given to a recovered lunatic to manage her own affairs without superseding commission.—The Lord Chancellor will not in general supersede a commission of lunacy after verdict, without seeing the lunatic.

A commission cannot be superseded as to the person of the lunatic, and at the same time continued in force as against the parties accountable for the lunatic's estate.

But a lunatic who has recovered will be allowed, without superseding the commission, to have the control of his fortune, and to superintend the prosecution of accounts against accounting parties, without the intervention of the committee. *Gordon, in re*, 2 Phill. 242.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 15, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

CONSOLIDATION AND AMENDMENT OF THE BANKRUPT LAW.

LORD BROUGHAM, in moving the second reading of the bill, which was shortly noticed in our last number, (*ante*, p. 203,) in the House of Lords, entered into some statements concerning the law and practice in Bankruptcy, not undeserving of attention.

The fact, that no less than forty-two acts of parliament have been passed within a recent period on this subject, the greater part of which still continue in force, is conclusive as to the expediency—we had almost written the necessity—of consolidation. Without this no alterations or amendments could be effective or satisfactory. This was emphatically stated by the Lord Chancellor. We rejoice to find it at length universally admitted. It is the first step to any real reform of this branch of the law.

In alluding to the digest of the Bankrupt Law, embodied in the bill now before parliament, Lord Brougham disclaimed any personal share in the merit of that compilation, which he stated was the work of Mr. Miller, one of the Registrars of the Court of Bankruptcy, whose practical knowledge of the existing system afforded obvious advantages in the execution of such a task. This fact affords an assurance that the digest has been judiciously and carefully framed, and as the measure is about to be referred to a select committee, such a compilation will serve as a foundation for the

labours of the committee, and enable the members more readily to estimate the weight of any evidence which may be adduced, or to decide upon the merits of any propositions that may be suggested. In this respect the bill now before parliament is of great value; but, as our readers will find, when we proceed to describe its details, every portion of the subject requires the most minute and careful consideration. It is not more important to determine what amendments should be introduced into the present system, than how much of it should be retained. Caution and judgment will be at least as much required in the work of excision as in that of creation.

Were it not for the acknowledged accuracy of those who furnish reports of the proceedings in parliament to the daily newspapers, we should have thought it impossible that Lord Brougham could, with a serious face, have congratulated those he addressed on the complete success of the present system, and the universal approval accorded to it. If universal dissatisfaction be the proof of “complete success,” undoubtedly the system has been signally successful, and the “approval” is testified by an organization for the amendment of that system more extensive and more persevering than we ever remember to have witnessed upon any subject of a purely social character, unconnected with party and politics. The annual alterations introduced by the noble and learned lord were submitted to, because it was felt that some alterations were imperatively required, and the present measure is only regarded hopefully because it holds

out the prospect of a total change of system. As evidence of the successful working of the system, Lord Brougham refers to the paucity of appeals. He stated that the average number of appeals from the town Commissioners was only five, and from the country Commissioners nine, or $14\frac{1}{2}$ from town and country on an average of six years; and last year, although no less than 1716 fiats were issued, it seems there were only eleven appeals. His lordship should be aware, however, that one of the manifold objections to the present system is, the obstruction, delay, and expense incidental to an appeal in cases where an appeal is allowed, and that no appeal is allowed in some cases where an appeal is most urgently required; for example, in the cases where a single Commissioner refuses or suspends the granting of a bankrupt's certificate. If Lord Brougham will move for a return of the costs incurred by those who have availed themselves of the right of appeal, and at the same time for a return of the rate of dividend paid in the 1716 cases in which fiats issued during the last year, he will find the small number of appeals accounted for in a manner much less satisfactory than he suggests. The fact is, that suitors submit to questionable decisions rather than incur an aggravated pecuniary loss, totally disproportioned to the advantage to be derived from a successful appeal. The luxury is placed beyond the reach of the great body of creditors, and, because few can enjoy it, it is assumed that the majority have no desire for it.

We are glad to find that the framer of the bill introduced by Lord Brougham has a more accurate view of the requirements of the suitors in this respect than his lordship seems to have taken. Upon looking to the very first section, treating of "the Constitution of the Court," we find a new Court of Appeal established and provided for in manner following:—

Art. 21.—The Chief Judge and any two of the other judges, acting in London, shall and may form the Court of Appeal under this act, which shall always sit in public, save and except as may be otherwise directed by this act, or by the rules and regulations to be made in pursuance thereof. Provided always, that if no appeal shall be lodged within 21 days from the date of any decision or order, every such decision or order shall be final, and that every appeal shall be subject to such order, in regard to deposit of costs, as shall by any general rule, order, or regulation, be directed.

Art. 22.—The Court of Appeal may direct any issue of fact arising therein to be tried by a

jury, before one of the judges thereof, or before a judge of assize, and may issue process to compel the attendance of jurors and witnesses, and enforce its orders and decrees, and to that end exercise all the powers vested for such purposes in any of her Majesty's Courts of Record at Westminster.

Act. 23.—After any issue authorized shall have been tried, a new trial thereof may be moved for, and the Court of Appeal shall grant or refuse such new trial according to the rules of the Common Law, and the Practice of the Courts of Westminster in granting or refusing new trials.

Art. 24.—All appeals from decisions or orders of the judges, shall be brought on by way of petition, motion, or special case, subject to any rule, order, or regulation, to be made, and shall be set down in the office of the chief registrar, and the chief judge and the Court of Appeal shall be attended by the senior registrar.

Art. 25.—If the Court of Appeal shall determine any point of law or matter of equity, or decide on the refusal or admission of evidence in the case of any disputed debt, and such determination or decision is appealed from to the Lord Chancellor, a sum not exceeding any expected dividend on the debt in dispute may be set apart, until such appeal is disposed of.

The establishment of a Court of Appeal, different from any at present in existence, is fully provided for by the new bill, but we do not find the matters which are to be the subject of appeal specified or pointed out in any part of the bill. We have looked carefully through the chapter entitled "Powers of the Court, and other Declarations and Enactments not contained in any of the other Chapters," but we fail to find in it, any more than in its predecessors, any reference whatever to what is intended to be the subject-matter of appeal to the new Court, consisting of "the Chief Judge and any two of the other Judges."

It is also remarkable, and, as it appears to us, extremely objectionable, that the new bill does not expressly repeal any one of the 42 acts which it is intended to supersede. The enacting clauses are simply as follow, omitting the two formal clauses usually found in English acts:—

The first section, after reciting the expediency of amending the laws relating to bankrupts, simplifying the language thereof, and arranging and consolidating the same in one statute, proceeds to enact:—

That the schedule to this act annexed, shall be deemed and taken to be parcel of this act, and that the analysis, and all the chapters, and articles, of such schedule, and the appendices thereto, and all the sections of such chapters, and the headings, summaries of contents, and numbers thereof, respectively, shall be deemed and taken to be enacted by this present act, as

if such analysis, and every of such chapters, articles, sections, appendices, headings, summaries of contents, and numbers, had been expressly and in terms herein recited with the usual words and in the usual forms of enactment or declaration or proviso, as the case may be.

2. That this act shall commence and take effect from and after the 11th day of November next; and after such day no fiat in bankruptcy shall be issued, but that thereafter all procedure to obtain adjudication of bankruptcy shall be by virtue of and in terms of this act, and of no other act, and all such procedure and every fiat in bankruptcy depending at the commencement of this act, shall be proceeded in and brought to a conclusion under the provisions of this act; and that in all matters and questions under or consequent upon any such procedure or fiat, the contents of this act shall be and shall be deemed and taken to be the bankrupt law of England: Provided always, that nothing herein contained shall render invalid any proceedings which may have been had under any fiat depending at the commencement of this act, or affect or lessen any right, claim, demand, or remedy, which any person now has or may then have thereunder, or upon or against any bankrupt against whom any fiat shall have been issued, except as is herein specifically enacted.

3. That the chief judge and such of the other judges of the Court of Bankruptcy as the Lord Chancellor shall appoint in that behalf, may from time to time make such rules, orders, and regulations as they may think fit, for the better carrying this act into execution, and as regards the duties to be performed by the chief and other registrars, the accountant, master, official assignees, and clerks, and by the messengers, ushers, and other under officers of the Court, and generally for regulating the practice in bankruptcy where not provided for in this act, all such rules, orders, and regulations to be approved of by the Lord Chancellor.

4. That no chief or other judge, chief or other registrar, accountant, master, official assignee, or other officer of the Court shall, during their respective continuance in such offices, be capable of being elected or of sitting as a member of the House of Commons, or be inserted in any list of persons qualified or liable to serve on juries or inquests, or liable to be called on to serve any parochial office, or practice as a barrister, attorney, or solicitor.

Our readers will judge for themselves, whether the second section can be said to repeal by implication all existing statutes. If this be not effected, the Bankrupt Law, instead of being simplified by the measure now proposed, will be rendered more confused and unintelligible. On the other hand, if the bill now before parliament can be considered as repealing all the existing statutes, many subjects of great importance would be left wholly unprovided for.

As we understand, it is intended that the bill introduced by Lord Brougham should not be passed into a law during the present Session, and that the reference to a Select Committee should afford an opportunity for the examination of persons practically acquainted with the subject, and for the consideration of further suggestions, we forbear, therefore, to enter more minutely into the provisions at this stage; and shall only repeat, that the bill now before us furnishes a useful foundation for the numerous and extensive alterations which the Bankruptcy Law requires to render it efficient and satisfactory to the public.

EXAMINATION OF PARTIES AS WITNESSES.

THE contradiction of principles which prevails in the administration of justice in the highest Courts having original jurisdiction, and in the Courts lately established by the legislature under the act 9 & 10 Vict. c. 95, is strikingly exemplified in a case of *Parker v. Morrell*, brought before the Lord Chancellor by appeal, and a report of which will be found in the number of the Law Journal last published.*

The plaintiff (Parker) filed a bill to set aside certain bonds in which he had joined, and which were given to Messrs. Cox & Morrell, who carried on the business of bankers in co-partnership, upon the ground that these bonds were obtained by fraud and concealment. The transactions which led to the securities being given took place between the plaintiff and R. Cox, who was at that time the partner of Messrs. Morrell, but who had for some years ceased to be a member of the banking firm, had since become bankrupt, and died before the commencement of the suit. R. F. Cox, the son of R. Cox, was made a defendant to this suit, as the personal representative of his father, and by his answer he admitted the case made by the plaintiff's bill, whilst the Messrs. Morrell, by their answer, denied all knowledge of any fraud or concealment. When the case came on for hearing before Vice-Chancellor Knight Bruce, the plaintiff's counsel proposed to read the answer of R. F. Cox against the other defendants, which was objected to by their counsel, but read *de bene esse*, without prejudice to the question, whether the same was admissible, a fact which the decree recited. The Vice-Chancellor directed issues to try the ques-

* 17 Law Jour. N. Series, p. 226, Chanc.

tion of fraud or concealment, and ordered, that upon such trial the plaintiff should be at liberty to be examined for himself, and the defendants (the Morrells) for themselves. The verdict was for the plaintiff, and on the equity reserved, the Vice-Chancellor directed a sum of 1,560*l.*, paid by the plaintiff to the defendants, to be repaid, with costs of suit, including the costs of the trial at law.

Upon an appeal from the decree of Vice-Chancellor Knight Bruce, the Lord Chancellor decided several points of great importance as regards the practice of the Court of Chancery. With respect to the admissibility of R. F. Cox's answer as evidence against the other defendants, his lordship said,—“When a piece of evidence is tendered and objected to, it is, I think, the duty of the Court, before it makes a decree, to decide upon the admissibility of the evidence; and I have no hesitation in the present case in holding that this answer, as tendered, ought to have been altogether rejected: it was an attempt to read the answer of one defendant against another, which is contrary to the rule and practice of the Court.” Upon the direction that at the trial the parties respectively should be at liberty to be examined, the Lord Chancellor thus expressed himself:—“The course which the Court sometimes adopts in endeavouring to ascertain the truth by a means inconsistent with the ordinary rules of evidence, has, no doubt, been frequently attended with advantage; but I think it ought to be resorted to with great caution, and never adopted unless, under the peculiar circumstances of the case, justice could not be obtained without it, and certainly never, when from the acts of the parties an unfair advantage would be gained by one to the prejudice of the other.” His lordship then adverted to the statements in the plaintiff's bill, from which he inferred that all the facts were in the knowledge of the plaintiff, and none of them in the knowledge of the defendants, who had not the means of contradicting what the plaintiff might state had taken place between him and Cox. This circumstance distinguished the present case from *De Tastet v. Bordenave*,^b and other cases in which the examination of parties had been directed. On this part of the case the Lord Chancellor said, in conclusion:—“I think that the order for the examination of the plaintiff gave him a very unfair advan-

tage over the defendants, and that this departure from the usual course of ascertaining the fact was calculated not to promote the object, but to lead to the opposite result.” His lordship then ordered the issue to be tried over again, without examining the parties, and that the defendants should receive back the money paid by them to the plaintiff, but without interest, as no special order had been made in this case respecting interest.^c

Had a state of facts similar to that which existed in *Parker v. Morrell* arisen in any proceeding in the County Court, the judge would, no doubt, have considered himself bound, under the 83rd section of the County Courts Act, to allow the plaintiff, and, if he desired it, his wife, to be examined on his own behalf, however unfair the advantage might be which such a proceeding would give him over the defendant; and in such an event the decision of the judge would not be open to appeal.

If it be for the furtherance of justice that the parties to any action in the County Court should be examined on every occasion, why is it necessary that in proceedings in the Court of Chancery such a practice, to use the words of the Lord Chancellor, “ought to be resorted to with great caution, and never adopted, unless, under the peculiar circumstances of the case, justice could not be obtained without it.” If the rule against receiving the evidence of parties has been advantageously abolished by one tribunal, one would think it might be safely relaxed by another.

LIFE POLICIES OF ASSURANCE BILL.

THIS bill recites, that policies of assurance on lives are not at present assignable at law, whereby very great injustice, expense, inconvenience, and delay have been occasioned to parties to whom assignments have been executed; and that, to secure the just claims of the assignees of such policies, and to render more satisfactory transactions between debtor and creditor, whereby trade would be benefited and creditors protected, it is expedient that all policies of insurance on lives should be assignable at law.

It is, therefore, proposed by this bill to authorize assignments of policies of assurance for lives; and that the assignee of such policy shall be entitled to recover from insurance companies. A memorandum

^b Jacob, 516.

^c See *Göttling v. Steele*, 1 Swanst. 199.

of the assignment is to be endorsed on the policy of assurance. The age of the person whose life is insured shall be deemed that which is stated in the policy, unless otherwise proved by the assurers; and policies of assurance are made receivable as evidence, provided they purport to be signed by the directors or their agent or secretary, subject to be disputed in case of fraud.

PAYMENT OF DEBTS OUT OF REAL ESTATE.

By the 11 G. 4, & 1 W. 4, c. 47, "An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate," it was enacted, that where any lands, tenements, or hereditaments had been or should be devised in settlement by any person or persons whose estate under that act or by law, or by his or their will or wills, should be liable to the payment of any of his or their debts, and by such devise should be vested in any person or persons for life or other limited interest, with any remainder, limitation, or gift over which might not be vested, or might be vested in some person or persons from whom a conveyance or other assurance of the same could not be obtained, or by way of executory devise, and a decree should be made for the sale thereof for the payment of such debts or any of them, it should be lawful for the Court by whom such decree should be made to direct any such tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers, or in such manner as the Court should think proper.

This provision does not extend to the case of lands, tenements, or hereditaments of a deceased debtor which are by descent or otherwise than by devise vested in the heir of such debtor, subject to an executory devise over in favour of a person or persons not ascertained. It is deemed expedient that the provision should be extended to such case.

A bill therefore has just been introduced by the Lord Chancellor, in which it is proposed to enact, That the provision of the 11 Geo. 4, and 1 Will. 4, c. 47, shall extend to any case in which any lands, tenements, or hereditaments of any deceased person shall by descent or otherwise than by devise be vested in the heir of such person, subject to an executory devise

over in favour of a person or persons not ascertained; and in any such case it shall be lawful for the Court to direct such heir although an infant, or if such heir be more than one person then any one co-heir although an infant, to convey the estate or interest of the deceased person in any such lands, tenements, and hereditaments in such manner as the Court shall think proper; and every such conveyance shall be as effectual as if the heir or person who shall execute the same were absolutely entitled at law or in equity to the estate or interest: so to be conveyed, and, if an infant, were of full age.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the *present* Session of Parliament, printed in this and the last volume of the *Legal Observer*, are as follow:—

- Extending Time for making Railways, vol. 35, p. 204.
- Regulating the Queen's Prison, p. 558.
- North American Passengers, p. 581.
- Crown and Government Security, p. 600.
- Oaths in Chancery, vol. 36, p. 7.
- Stamp Duties Assimilation, p. 8.
- Trial of Controverted Elections, p. 23.
- Removal of Aliens, p. 182.

ANNUAL INDEMNITY.

11 VICT. c. 19.

An Act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those Purposes respectively until the 25th day of March, 1849. [9th June, 1848.]

1. Persons who have omitted to qualify themselves by taking the oaths required by the following acts:—1 G. 1, st. 2, c. 13; 13 C. 2, st. 2, c. 1; 25 C. 2, c. 2; 30 C. 2, st. 2; 8 G. 1, c. 6; 9 G. 2, c. 26; 18 G. 2, c. 20; 6 G. 3, c. 53; 9 G. 4, c. 17; 10 G. 4, c. 7, are allowed further time until the 25th day of March, 1849, to take and subscribe the oaths, declarations, and assurance respectively, in such cases wherein by the said several acts or any or either of them the said oaths, declarations, and assurance ought to have been taken and subscribed, in such manner and form, and at or in such place or places, as are appointed in and by the said several acts or any or either of them, and are indemnified, freed, and discharged from and against all penalties, forfeitures, incapacities, and disabilities incurred or to be incurred for or by reason of any neglect or omission previous to the passing of this act, of taking or subscribing the said oaths or assurance, or

making or subscribing the said declarations respectively, or taking or subscribing the said oath, according to the above-mentioned acts or any of them or any other act or acts; and such person or persons is and are and shall be fully and actually recapacitated and restored to the same state and condition as he, she, or they were in before such neglect or omission, and shall be and be deemed and adjudged to have duly qualified him, her, or themselves according to the above-mentioned acts and every of them.

2. Indemnity to those who have omitted to make and subscribe the oath and declaration required by the Irish act of 2 Anne.

3. Not to indemnify persons against whom final judgment has been given.

4. Not to exempt justices acting without legal qualification.

5. Admissions to corporations may be stamped after the time allowed.

6. Not to restore persons to any office avoided by judgment.

THE ATTORNEYS' CERTIFICATE DUTY.

"AN OLD CORRESPONDENT" on this subject, states that we have misunderstood his proposed substitution of a fee on legal proceedings instead of the Certificate Duty. We therefore give his letter *in extenso*. We still think that this plan amounts to a direct tax on the administration of justice, to be levied (as now explained) on the practitioner, and not on the suitor. We apprehend that if an act were passed to this effect, it would be far more difficult to repeal it than to repeal the present duty.

Moreover, if each attorney must pay a fee on every step in every cause or proceeding, why should the barrister be exempt from an *ad valorem* payment on his fees? or the physician, or the surgeon, or the apothecary, the engineer, the architect, the various kinds of artists, or a score of other *quasi* professional classes?

MR. EDITOR.—As the Old Correspondent alluded to in your last, I beg to thank you for the notice you took of my communication in the Certificate Duty, but it is my fate to be misunderstood. You may perhaps have forgotten that when in former correspondence I urged my scheme on your consideration; you, or some one of your correspondents, intimated that if the attorneys had to pay small sums, shillings and sixpences, &c., on *all proceedings*, they would find means to charge their clients with the amount, which induced me to ask again, whether after having dealt unjustly with the attorneys, and actually broken its contract, "to the effect that the profits of the profession should pay for the duties imposed," the country was now at liberty to add insult to injury, by setting up the cry of dishonesty. But now,

you, I am misunderstood. You mention an act of parliament for ever abolishing stamps on legal proceedings, and intimate doubts as to the efficiency of my scheme on that ground. I want no stamps on legal proceedings. I trust they never will be seen again. All I desire is, that the clerk or other officer who signs the writ, the judgment, takes in the appearance or declaration, or bill or answer, or does anything in a suit, cause, or railway matter, should at the same time as he takes the government fee, and if you please, in cases where no fee is now paid to government, just take 1s. or 2s. or 6d. more, taking care not to take too much, and this is to be a tax on attorneys to relieve the unequal pressure of the Certificate Duty in a crushing sum of 12l., and to wait till the government shall get rich enough to inquire fully into the folly and injustice of any duty at all on our much injured profession. I trust this will be done *before next November*. There is no reason why it should not, and I hope no one in parliament will be permitted to put the matter off, by saying they do not understand so simple a remedy.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

OFFICE AND STATUS OF ATTORNEYS.

[We have been favoured by a member of the Metropolitan and Provincial Law Association, with the following topics. Our readers will recollect that many of them have been discussed in the Legal Observer, and we purpose in the Long Vacation to pursue the inquiry, especially into the historical parts of the subject.]

Topics of inquiry suggested by the committee, on which each of the Members of the Society is invited to communicate facts and illustrations, and to suggest other topics of inquiry.

The object of the committee, in circulating this paper, is to collect a body of information which may assist them in framing well-advised regulations for raising the character, improving the position, and increasing the usefulness of attorneys. It is not their wish to influence or anticipate the opinion of the profession upon any of the inquiries which it embraces, but simply to point out those subjects upon which, under existing circumstances, they think it desirable to ascertain facts accurately, and to collect the deliberate and unbiassed opinion of the profession.

The committee are sensible that the range of topics which they have included, is much wider than any one gentleman can reasonably be expected to undertake, but still they have thought it best to include the whole in one paper, and leave it to their professional brethren to select for comment those points upon which individual research, experience, or reflection may best qualify them to form an opinion, passing over the rest. In this way the com-

mittee confidently hopes the replies of the profession, may furnish a body of authentic and useful information on all the important subjects proposed for investigation.

The committee beg particularly to impress upon the gentlemen to whom the paper is sent, that there is no mode in which they can so effectually assist the association, in its future exertions on behalf of the profession, as by each gentleman accompanying his answers with a full statement of as many *well-authenticated instances* as possible. It is obvious that upon the number and weight of facts the association must depend for the utility and success of its measures.

1. An inquiry into the origin of attorneys-at-law, their office and *status*, and the gradual changes which have taken place, resulting in their present professional position and character.

2. An inquiry into the history, objects, and peculiar constitution of the Inns of Court in relation to both barristers and attorneys, and into the nature and dates of the various *changes* that have taken place in the governing body, and particularly by what steps attorneys have been excluded from their original position and privileges in the Inns of Court, tracing each act tending to exclusion *seriatim*, with the date, and showing what was, at each period, the constitution of the governing body.

3. Is there any reason why a certificated special pleader, or conveyancer (who may bring an action for his fees, who is admitted on no roll, and is subject to no legal examination,) should have the privilege of being a member of the Inns of Court, while attorneys are excluded?

4. Whether, considering the important powers exercised by the bar, and the very large proportion of public offices appropriated exclusively to them, the Inns of Court, as at present constituted, ought to have the power of admitting to, or excluding from, the bar at their pleasure.

5. What practical check or responsibility now attaches to the exercise of this power, and is it sufficient?

6. Whether the power has not been exercised injuriously to attorneys and to the public, and state instances.

7. In whom should the power be vested, and with what safeguards for the fair and impartial exercise of it?

8. Whether it is, or is not, desirable that attorneys and barristers should both be qualified for their profession through the same means, and that they should have the power of electing to be called either as barristers or attorneys.

9. What are the relative position and privileges and system of education of those who practise as attorneys and barristers in Scotland and Ireland, and other countries, especially

in our own colonies; and in America; and whether they are not placed upon a more advantageous footing, so far as the public interest is concerned, than in England.

10. A statement to be made of the offices for which barristers alone are eligible, distinguishing those which have been created within the last twenty years; and as to such of them as were formerly held by attorneys, the dates and alleged grounds for excluding attorneys in favour of barristers.

In the country this question will include—

Local Judgeships,
Bankrupt Commissionerships and other offices.

11. A statement of offices to which attorneys alone are eligible.

12. A statement of offices for which *both* barristers and attorneys are still eligible, and what number of these have been actually given to the bar and to the attorneys respectively.

13. Also of the amount of pensions for abolished offices, or on retirement from office, now enjoyed by barristers and attorneys respectively; and in respect of what offices.

14. In what instances have attorneys been excluded from the privilege of advocacy before tribunals where they formerly possessed it; by whose authority, and on what alleged grounds; and in what instances do they still possess the privilege?

In the country this will include—

Quarter Sessions,
Provincial Courts, &c.

15. What practice prevails, and what regulations have been made by the judges of the County Courts, as to giving orders to barristers and attorneys; and in what instances, and to what extent, are barristers now allowed exclusive audience, or pre-audience in those Courts?

[Gentlemen are requested to give full answers to the last two inquiries, as far as regards the Courts in their respective districts.]

16. What is the practice in the Ecclesiastical Courts upon this subject?

17. In the cases where the privilege of advocacy is still exercised by attorneys, is it of right or by sufferance, and what security is there for its continuance?

18. What has been the experience of the public in employing barristers and attorneys indiscriminately, before the Commissioners of Bankruptcy in London and the country, and before Sheriff's Courts, and other local Courts, and what before committees in parliament?

19. Whether the right of advocacy by attorneys, before Commissioners of Bankruptcy in the country, should not be secured to the country solicitors by act of parliament as it is now secured to the London solicitors, before Commissioners of Bankruptcy in London.

20. Whether it be just to attorneys, and for the benefit of the public, that the bar should be admitted to exclusive audience in any and what Courts, so as to prevent attorneys from pleading; and if so, should the exclusion ex-

In stating the instances, the committee wish it to be understood that the facts, only, and not the names of persons who may be mentioned, will be published.

tend to all Courts, or to what Courts should it be limited?

21. What effect is the attorney's privilege of advocacy calculated to produce on the social position and intellectual standard of his profession; and what consequences to the profession, in both views, may be anticipated from the loss of it?

22. Judging from the instances within your experience and observation, what do you consider to be the proportion of property involved in those portions of the duties of an attorney which he performs without aid, to that involved in the cases in which counsel, or counsel and the bench, are called into use?

23. How far are property, moral character, and respectable position in society necessary for an attorney, and how far for a barrister?

24. How far is the attorney made the capitalist, in carrying on the labours of the whole profession; and how far is it necessary or right to subject him to that outlay and responsibility?

25. What is his position as capitalist, when compared with the position of the capitalist in other pursuits; and what occasions the difference?

26. What is the effect of payments made in the performance of his duties, on his responsibility and labours as an attorney, and on his popularity and influence in society, in being the collector from his client of objectionable or unpopular payments, &c.?

27. State instances in which a barrister, having accepted his brief and fee, has not attended the Court himself, but, without the consent of the suitor or attorney, has given his brief to some other barrister of his own selection, or neglected the case altogether.

28. Whether, in the event of the non-attendance of any counsel retained in the cause, the attorney should not be required to take part in the conduct of the case himself?

29. What is the etiquette of the bar in town and on circuit, so far as it affects attorneys; and state instances of the injurious exercise of such etiquette, so far as it affects either the attorney or the suitor.

30. State instances of the effect of this etiquette upon the emoluments of the bar.

31. Whether the course frequently pursued by barristers at sittings and assizes, which in effect coerces the attorneys and parties, after the barristers have received their fees, and after parties, attorneys, and witnesses, have been brought together at great expense, into a settlement, or a reference to arbitration, is not highly unsatisfactory and injurious to the suitor? and state instances?

32. How far does the present system of professional remuneration, operate to discourage the attorney from the exercise of his own learning and skill, and as a temptation to consult a barrister unnecessarily? and state instances.

33. What is the respective expense of the education and qualification of the barrister and of the attorney? And what are the class taxes paid by each?

34. What are the respective fees allowed by act of parliament, and on taxation, for similar duties performed by the barrister and by the attorney?

35. To what extent, and in what way, are barristers and attorneys severally responsible for the due performance of their functions? and what are the remedies of the suitor against each class in case of failure or neglect?

36. What test of proficiency (legal, literary, and scientific), either by examination or otherwise, and on what subjects, should be applied to gentlemen desirous of becoming attorneys; and should the test be applied previously to their being articulated as clerks, or previously to their admission, or at various and what periods?

37. Should any professional tribunal be established for attorneys (analogous to the Inns of Court for barristers) for the remedy or prevention of professional misconduct, and for settling questions of practice arising between solicitors; and if so, how ought such a tribunal to be composed, and should power be given to it to admit, suspend, or exclude from practice (as the Inns of Court have), and with or without an appeal to the judges, or to any and what other authorities?

38. Add any facts, opinions, or suggestions, on the general subject of these inquiries, which you may think useful.

PROPOSED ALTERATION OF STAMP DUTIES, CERTIFICATE TAX, &c.

WE subjoin from a work entitled "Money and Taxation," (published by Peirce, 310, Strand,) a plan for the modification and adjustment of the Stamp Duties, which is worthy consideration. Instead of the rates now payable the writer proposes as follows:

| | £ | s. | d. |
|--|---|----|----|
| On inland bills of exchange, for every 100 <i>l.</i> | 0 | 1 | 6 |
| On ditto, from 100 <i>l.</i> to 200 <i>l.</i> and so in proportion | 0 | 3 | 0 |
| Foreign bills drawn abroad, only one in a set, to be stamped 100 <i>l.</i> | 0 | 1 | 0 |
| 100 <i>l.</i> and under 200 <i>l.</i> , and so in proportion | 0 | 2 | 0 |
| Receipts from 20 <i>s.</i> to 10 <i>l.</i> | 0 | 0 | 1 |
| 10 <i>l.</i> to 20 <i>l.</i> , and so in proportion | 0 | 6 | 2 |
| Policies, fire and maritime, under 100 <i>l.</i> | 0 | 1 | 0 |
| Ditto, 100 <i>l.</i> and under 200 <i>l.</i> , and so in proportion | 0 | 2 | 0 |
| Policies, life, under 100 <i>l.</i> | 0 | 5 | 0 |
| Ditto, 100 <i>l.</i> and not exceeding 200 <i>l.</i> | 0 | 10 | 0 |
| Ditto, 200 <i>l.</i> and not exceeding 300 <i>l.</i> | 0 | 15 | 0 |
| Ditto, 300 <i>l.</i> and not exceeding 400 <i>l.</i> and so on in proportion | 1 | 0 | 0 |
| Bonds and mortgages not exceeding 100 <i>l.</i> | 1 | 0 | 0 |
| Ditto, 100 <i>l.</i> and not exceeding 200 <i>l.</i> , and so in proportion | 2 | 0 | 0 |
| CONVEYANCES, not exceeding 100 <i>l.</i> | 1 | 0 | 0 |
| Ditto, 100 <i>l.</i> and not exceeding 200 <i>l.</i> , and so in proportion | 2 | 0 | 0 |
| Apprentices' indentures, premium 100 <i>l.</i> , and so in proportion | 1 | 0 | 0 |

| | £ | s. | d. |
|---|---|----|----|
| Probates and administrations, with wills annexed, including the descent or transfer of real estates not exceeding 100 <i>l.</i> | 1 | 0 | 0 |
| Ditto, 100 <i>l.</i> and not exceeding 200 <i>l.</i> , and so in proportion | 2 | 0 | 0 |
| Duties on legacies within every degree of kindred, (husband and wife exempted,) strangers and royal family, per cent. | 2 | 0 | 0 |

The author, we understand, proposes an *ad valorem* tax of 1*l.* per cent. on the transfer of freehold or copyhold estates, otherwise than by will. The duty arising from this modification of the Stamp Duties is estimated to approximate to 25,000,000*l.* or nearly 17½ millions more than they now produce. At all events the suggestions are deserving serious attention.

A Correspondent says, "I have ever been utterly at a loss to discover why *real estates* should be exempt from *probate and legacy duty*, except that the owners are the great landed proprietors, and as law makers, seek to throw the burden on the shoulders of any others rather than bear it themselves,—but this class legislation will no longer be borne. It is manifestly unjust and oppressive; if there is to be any difference in the principle of taxation, considering the magnitude of their possessions, they ought to pay a larger instead of a smaller tax.

"As regards the Property Tax also, were a modification of the Stamp Duties carried, I think that all persons of 300*l.* a year should be assessed at only 150*l.*, and so in proportion to put them on a footing with those of 149*l.* income,—and that the tax should be increased as the income increases. Let 300*l.* a year pay 7*d.* in the pound on 150*l.*, and so on. Let 1,000*l.* a year pay 9*d.* or 1*s.*, 5,000*l.* more, and so in proportion.

"The magnitude of the stamps on marriage settlements, of money, and on leases and counterparts, operate against the revenue, as counterparts or duplicates are dispensed with in cases of very heavy *ad valorem* duties. I have heard of the duties not being affixed at all, and some 10 or 15 years afterward paying it with the penalty of 5*l.*, which is not a 20th part of the interest on the value of the heavy *ad valorem* stamp. The heavy Stamp Duty defeats the object and injures the revenue.

"By these means the Chancellor of the Exchequer would be enabled to give up the 90,000*l.* a year wrung from the shamefully reduced fees of professional men, which, to render it anything like an equal taxation, should be imposed on every writ issued, or proceeding taken by the attorney, and not individually."

We have received another proposition for adjusting the amount of Stamp Duties on an equitable principle, suggested by a solicitor, to which we shall hereafter advert.

COSTS IN THE COUNTY COURTS.

To the Editor of the Legal Observer.

SIR,—The advocates of cheap law as administered in these Courts, are taking every opportunity of heralding forth to the community the immense advantages of the modern system over that of the repealed one, and although I have felt the necessity of protesting against certain practices in these new Courts, I am free to admit that great advantages accrue from them to the public; nevertheless, it must be conceded that great evils are mixed up in the new administration of the law, and it is to the eradicating of these evils I strenuously exert myself.

In the County Courts it is well known, that the great majority of suitors consist of a class of small retail dealers, who are totally ignorant of the principles and practice of these or any other Courts of Law; not more than one in every 100 of them know how to fill up the forms properly, simple as they appear to a lawyer. So undeniable is this proposition, that I will challenge any trader in the metropolis, who has not passed through the ordeal repeatedly, to succeed in putting his case technically correct before the Court of his own unaided powers; consequently the suitor is obliged in self-defence, and in opposition to his wishes and expectations, to employ an agent. If he employs an agent, of course he must pay him, and if it were not that some few of the members of the legal profession, by puffing advertisements and touting their services in public-houses make it known that assistance upon terms secretly arranged and to be bargained for, can in this way be obtained, the suitors would get no help at all, for you are well aware that no truly respectable attorney will appear in these Courts, except in extreme cases, and the reason is, they are not adequately remunerated for their trouble and loss of time in attending the Courts.

It is remarked, that no system can be adapted to suit the caprice of all; but is that a valid reason why persons who are willing and able to pay for professional assistance in these Courts should be debarred a privilege accorded in the Superior Courts?—to this it will be retorted, that the privilege does extend to these Courts, and that a suitor may avail himself of the services of an experienced and talented advocate; but upon what terms, I ask, can he do so in point of recompense? are the costs allowed to an attorney either to prosecute or defend actions in these Courts, anything approaching to adequate remuneration? It is manifest that the framers of the act constituting these Courts, and the judges who settled the amount of costs, intended by their dwarf-like scale to deter respectable attorneys from practising in these Courts, and that object has been attained to the

detriment of honest traders and the encouragement of pettyfogging, and in many instances uncertificated attorneys.

So great is the distrust observed towards these Courts by a large portion of respectable shopkeepers, that they resort to every possible expedient to keep out of them; some take bills of exchange, under a notion that as these contracts have no locality, the Superior Courts have concurrent jurisdiction, and therefore the creditor has his election to sue in the latter Courts, (this you are aware is not yet judicially settled). Some extend the credit to 20*l.*; many will not execute orders under 20*l.*; and it is pretty evident from the large increase of suits in the only Metropolitan Court left open to recover debts less than 20*l.*, and where the suitor can avail himself of legal assistance, and where the costs to abide the event are adequately apportioned to the services rendered, that there is a strong and convincing disposition manifested in favour of the allowance of a reasonable remuneration to solicitors.

I desire it to be clearly understood, that I do not wish to saddle the poor suitor with additional charges: their sufferings are severe enough; but what I respectfully solicit and urge on the consideration of those who have the power to make these Courts really efficient is, that a scale of costs proportionate, not to the amount of the debt claimed, but to the services rendered should be framed, and that in every case the judge who tries the cause should have the power of awarding these costs to the successful party.

If the advocates of cheap litigation sincerely desire to uphold the New County Courts, by the only claim entitling them to succeed, they must get the office fees considerably diminished, and place it in the power of those who are disposed fairly and honestly to submit their claims to the final arbitrament of these new tribunals in the most unexceptionable form, and to do so effectively and with equal-handed justice, they must open the doors wide enough to admit the class alluded to, and give them every encouragement to contest the plaint in issue, subject as to costs as in the Superior Courts. T. W. H.

SELECTIONS FROM CORRESPONDENCE.

CITY SEAL.—NOTARIAL CERTIFICATES.

To the Editor of the Legal Observer.

SIR, — In reference to a communication signed A., which appeared in your paper of the 3rd June, I am led to observe that it would have been as well had the writer stated the facts of the case under which "legal instruments under the City Seal, without a notarial certificate, have been returned from Demerara as informal."

As regards the practice of the Supreme Court of Civil Justice of British Guiana, I can safely say, that it is simply governed by the 5 & 6 Will. 4, c. 62. and that at least up to 1st July, 1847, no such thing was required as the City Seal being certified by a notary.

Various informalities have occurred in executing powers, &c., and which have come under my own knowledge, and of course no seal of any chief magistrate could cure such defects. The Acts of Geo. 2, and Will. 4, apply to all the colonies.

ALPHA.

WM. HENRY BARBER'S CASE.

OUR readers, duly anxious for the honour of their profession, will have deeply regretted some recent defalcations amongst its members. These instances are rare when considered with reference either to the numerous body to which they belong, or to the vast amount of temptation to which they are subjected. The public is prone to deal harshly with offenders of this class. A ready credence is given to circumstances of suspicion; and where a doubt exists in a prosecution against an attorney, he is not, like other persons, entitled to the benefit of that doubt.

We are induced to make this reflection in consequence of a communication we have recently received, relating to Wm. Henry Barber. The Law Society of Sydney have taken up the case, and made a report, which we feel called upon to submit to our readers. This report is contained in a pamphlet, edited by Mr. Archibald Michie, a Barrister of the Inner Temple, published at Sydney, and it contains several important documents and testimonials in Mr. Barber's favour, who seems to have entirely convinced the profession there, the clergy, and many persons in authority, of his innocence. We can at present find room only for the Law Society's report, which is as follows:—

"Pursuant to the resolution by which, in compliance with Mr. Barber's request, the society undertook the investigation of his case, and formed itself for that purpose into committee, it has held daily meetings from the 29th ult., to the 9th instant inclusive. At these meetings the entire report of the trial of Mr. Barber, which ended in his conviction and transportation, has been carefully read through, as published in the London daily papers. Also, the report of the previous examination at the Mansion House, and various contemporary correspondence and editorial comments relating to the subject.

"The society having thus possessed themselves of the case as fully as possible, in the form in which it was presented to the jury, and the English public at the time of the conviction, they proceeded carefully to investigate the subsequently acquired evidence, and heard the explanation by means of which Mr. Barber had already succeeded in possessing the minds of so many competent judges with a full persuasion of his innocence.

"The result of such investigation has been to establish the same persuasion in the minds of the society; nor can they have any doubt that far less exculpatory evidence than has been laid before them, would have rendered it impossible for the jury to bring in a verdict of guilty against Mr. Barber.

"None of the circumstances on which Mr. Barber's prosecution chiefly relied as evidence of guilt, were in fact incompatible with his innocence. Great stress was laid on the tracing to him a bag of 600 sovereigns, which he carried away for, or with, Mrs. Sanders, when she received the money at the Bank of England. The society cannot see how an attorney's knowledge of his client's fraud can be inferred from an act, which, if innocent, he would have been equally, and for some reasons more, likely to have performed, namely, the carrying a heavy bag of coin for a lady who either had, or appeared to have, the gout in her hands.

"Again, great stress was laid upon the circumstances which pointed out the identity of Captain Foskett's sister-in-law with the true owner of the stock, and which it is argued must have convinced Mr. Barber of such identity, and so proved his bad faith in lending himself to any other claimant. When, however, Captain Foskett cannot deny that he represented his sister's age at 27, and the nature of Messrs. Barber and Bircham's impressions of her age, derived from this source, are evident from their alluding to her as 'the young lady' in a contemporary letter of business; and when it is evident that no person of such an age could possibly have been owner of the stock, it is surely too much to take it for granted against Mr. Barber, that because other strong indications of identity existed, he must necessarily have solved the mystery in favour of Miss Slack, by disbelieving what her brother-in-law, Captain Foskett, had stated upon the material fact, inventing for a lady he had never seen the different age of 37. On many other points, the peculiar position of an attorney in conducting the affairs of his client was conducive to fallacious inference against Mr. Barber. It was assumed by the prosecution that whatever was stated as fact in Mr. Barber's correspondence, or otherwise acted on by him, such as the result of a comparison of handwriting, was a fact he had personally investigated, and of which he must himself have known the truth or falsehood; whereas every attorney, and almost every client, well knows that facts resting on clients' bare instructions are necessarily blended and confounded with those resting on personal knowledge in the common course of professional business.

"This general consideration, although above applied only to one circumstance, will be found to clear away a large part of what appears, on a superficial glance at the evidence, to raise suspicion against Mr. Barber.

"With respect to Mr. Barber's concealment of the name of his client Fletcher at his interview with Mr. Freshfield, it is to be observed that a reason for this concealment existed, irre-

spective altogether of any question of the crime of forgery, namely, the desire of Fletcher to avoid inquiry into the source of his information regarding unclaimed dividends, a source which he does not seem, judging from the testimony of Mr. Christmas, to have ever revealed even to Mr. Barber himself; nor were these separate motive absent, is it clear that an attorney would be justified in disclosing the name of a client in connexion with a *prima facie* case of guilt, without first availing himself of all the means in his power to clear up the facts, and accompany the disclosure with an explanation by way of antidote. A conscientious attorney might even from very scrupulosity feel bound to pause and consider before making such a revelation.

"To judge of the propriety of all that fell from Mr. Barber in this conversation is not the task which the Society has undertaken, and were it so, they would have first to consider whether Mr. Freshfield's statements be sufficiently accurate or complete to enable them to form an opinion. Mr. Barber solemnly denies its accuracy, in many important respects, while Mr. Freshfield on the trial himself more than admits its incompleteness, nor could it be fairly judged of, without a knowledge even of the tone of voice and manner assumed by both parties. On the whole it is a relief to the society to be freed from all obligation to disentangle the perplexities in which this piece of evidence is involved, inasmuch as with the light now thrown by other means on the case, the conversation between Mr. Barber and Mr. Freshfield is in no imaginable point of view material to a decision upon the main question of Mr. Barber's innocence of the crime imputed to him.

"So weak was, indeed, the case proved against him, that if the prosecutors had not resisted his application for a separate trial, the society cannot conceive it possible that any jury could have found him guilty. The society cannot conceive any case which more peculiarly required a separate trial. From the very nature of the case it was scarcely possible that any one individual besides the other accused parties could possess actual knowledge whether Barber had been really the confederate or victim of their fraud; and a sifting examination of those persons, whatever their character was at least a safer channel to the truth, than the vague case of suspicion and remote inference, which, so far as Barber was concerned, was presented to the jury on the joint indictment. When it is also considered that the prosecution had access to Mr. Barber's Diary, and had followed in vain several tracts of inquiry which might have been naturally expected to afford proof of guilt, had guilt existed; also, that in a complicated transaction of this nature, the concurrent and consistent testimony of the other accused persons in any story exculpating Barber, so as to stand cross-examination, would have been next to a miracle, unless such story were true, and this particularly when all intercourse between them appears to have been

carefully prevented from the moment of their apprehension, the refusal still appears more extraordinary, and the society cannot but regard it as the main cause of Mr. Barber's unmerited sufferings, and a fearful exception to the usual tenderness and caution of English justice.

"The society also think if the trials had been separate, the examination of Mr. Barber in like manner on the trial of the other parties could hardly have failed of itself effectually to have removed all doubts of his own guilt, had it existed, a thing of infinitely greater importance in giving useful effect to exemplary punishment than the mere fact of the conviction of a supposed criminal, especially on doubtful or unsatisfactory evidence.

"The soundness of these views is manifest from the conduct of the whole of the parties after their conviction, from which, under less favourable circumstances, than separate trials would have afforded, more real light has been cast on the transaction than by the judicial investigation in which a jury was called on to grope after the truth in the comparative darkness, resulting from the exclusion of the only direct testimony accessible. The society are not indeed blind to the general worthlessness of exculpatory statements made by accused persons in favour of each other, yet they cannot but perceive that in this case the conduct of Barber and Fletcher, and the statements of the latter, stand on peculiar grounds, and are therefore entitled, especially when other circumstances concur, to peculiar weight. It is evident from the testimony of the present Civil Commandant of Norfolk Island, Mr. Fuller, the Rev. T. B. Naylor, and Assistant Commissary-General I. W. Smith, the Rev. Thomas Rogers, Dr. Browning, and others, that Fletcher painfully felt, that but for the statements of Barber, the part he took in the transaction might have been kept out of sight, or that an opportunity of escape at least might have been afforded him. He, too, could not be unconscious that the admission of Barber's innocence would, by adding to the crime of which he had been convicted, that of having occasioned the ruin and conviction of a highly respectable man, expose him to the just abhorrence of every honest man, and take away all hope of mitigation.

"The society conceive the sum of Mr. Barber's offence to be that of allowing himself to be employed by a very wealthy and apparently respectable man, in tracing out the owners of unclaimed dividends, a course of practice which unavoidably subjects the parties concerned to be made the dupes of artful and unprincipled persons. They do not feel entitled to express disapprobation of a course which has been adopted by men of undoubted honour and integrity, and still less to admit that it ought of itself for a moment to subject the party to the imputation of fraud, or even improper motives. It may be said that the perpetrator of such a fraud was not likely to select an honest attorney; but it is often of the greatest importance to persons engaged in nefarious practices, to employ spright and

honourable men, the character of whom cannot fail to avert suspicion, but who must of course be kept in profound ignorance of the evil character of the acts to be accomplished, and in this consideration may be found a sufficient motive for the various arts which were employed to blind Mr. Barber, and effectually impose upon his judgment.

"On the whole, the Society feel an unanimous persuasion that Mr. Barber was entirely innocent of the fraud practised by Fletcher, that it is chiefly, if not wholly, in consequence of his being shut out by a joint indictment from the most obvious and certain means of eliciting the truth, that he has endured the disgrace and misery of conviction and unmerited punishment, and that he is entitled to every assistance in his endeavour to resume his position in society, not to speak of reparation, could any reparation be possible, or if possible, sufficient in such a case."

"(Signed) JAMES NORTON, *President.*"

"*Sydney, 16th August, 1847.*"

We are the more induced to take notice of this case in consequence of the books and papers of Mr. Barber having been inspected soon after his conviction, by a very intelligent and respectable solicitor, since called to the Bar, who communicated to us the result of his investigation, and which we published at the time. See L. O. for 13th July, 1844.

BARRISTERS CALLED.

Easter Term, 1848.

LINCOLN'S INN. 5th May.

John Pennell Snow, Esq.
Thomas Henry Marsh, Esq.
John Harward Griffiths, Esq.
Carrington Francis, Esq.
Francis Henry Randle Wilbraham, Esq.
Thomas Richard John Bushell, Esq.
Theodore Judkin Du Bois, Esq.

9th May.

Henry Sargant, Esq.
The Honourable Frederick Byron.
Henry William Forester, Esq.
Alexander Anderdon Weston, Esq.
William Stewart Ferrers, Esq.
Philip Jennings, Esq.

INNER TEMPLE. 5th May.

Henry Shaw, Esq.
George Williams Parry, Esq.
Henry William Sherer, Esq.
George Charles Cherry, Esq.
Thomas Wood, Esq.
Joseph Kay, Esq.
Neill Malcolm, Esq.
Henry Richard Woodhouse, Esq.
Charles Morse, Esq.
George Henry Cooper, Esq.
Charles Downing, Esq.
Henry Salusbury Milman, Esq.
William Henry Willes, Esq.
Charles James Dawson, Esq.
Charles Gipps Prowett, Esq.]

Henry Wyndham West, Esq.
Calthorpe Whitmore Richard Ryder, Esq.
Frederick Waller, Esq.
George Edward Cottrell, Esq.
Henry Munster, Esq., 12th May.

MIDDLE TEMPLE. April 20th.

Ben. F. Mosse, Esq.
Chas. H. Cook, Esq.

May 12th.

Wm. B. Mony, Esq.
F. Gosnell, Esq.

F. Gisborne, Esq.
M. S. Lynch, Esq.
E. H. Howard Gibbon, Esq.
John D. Bell, Esq.
J. H. Battersby, Esq.
The Honourable Edward Drummond.
Francis P. Campbell, Esq.

GRAY'S INN.

Authur Rice Jenner, Esq.
Henry Nicholas Carr, Esq.
John Stratford Collins, Esq.
Maurice Charles Merthus Swabey, Esq.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Attorney-General v. Adams and others.
June 28, 1848.

SETTING ASIDE ATTACHMENT AGAINST, AND APPEARANCE FOR, A MARRIED WOMAN IN HER MAIDEN NAME.—COSTS.

A married woman not holding herself forth as a single woman, but taken in execution under a writ of attachment issued against her in her maiden name, will be discharged from custody without payment of the costs of the application.

An appearance entered by the plaintiff or relator for her in her maiden name will be set aside.

If her conduct should have been such as to have misled the other side, the costs will be reserved until the hearing.

Mr. Bazalgette, on behalf of one of the defendants, moved, under the following circumstances, to discharge an order of the Vice-Chancellor of England, and to set aside an appearance which had been entered by the plaintiff. This defendant, who was a married woman, had been described in the information by her maiden name, and had been thus served with the usual subpoena to appear and answer. Not having obeyed this subpoena, the relator caused her to be served with another, and subsequently entered an appearance for her in her maiden name. No answer having been put in, the relator issued a writ of attachment against her, and under it she was taken into custody. The Vice-Chancellor of England had refused, with costs, her application to be discharged from custody. The certificate of her marriage was produced, and it appeared from the affidavits of herself, her father-in-law, and her husband, (with whom she had not been living for many years,) that the latter was still alive.

Mr. Twells opposed the present motion, and read affidavits to show that the relator had not been informed of her marriage; that she had been for several years cohabiting with another man; and that she had acknowledged herself by her maiden name when served with the two writs of subpoena and the writ of attachment. The learned counsel cited *Pannell v. Taylor*,

Turn. & Russ. 100; Collins v. Rowed, 1 Bos. & Pull. 54; Fordyce's case, 2 Law Jour. K. B. 80; Slater v. Mills, 7 Bing. 606; and Freame v. Mitford, 1 Crompt. & Mee. 54.

The Lord-Chancellor, without calling for a reply, said, that in the present case there had not been such a holding forth of herself by the defendant as a *feme sole* as appeared in the cases cited. She certainly appeared to have been living with anybody but her husband. With this, however, the Court had nothing to do. It was quite clear that she was a married woman, and all proceedings against her as a single woman must therefore be irregular. She must be released from custody, and the order of the Vice-Chancellor discharged. As the relator might have been misled by her conduct, the costs of the application would be reserved until the hearing. The appearance which had been entered for her must also be set aside, as asked for by the motion.

Mr. Twells applied that an undertaking not to bring any action for her imprisonment might be made a condition of her discharge, but

The Lord Chancellor said, that he could not require such an undertaking from a married woman. If any action should be brought, it would be taken notice of when the question of costs came to be considered.

Vice-Chancellor of England.

Attorney-General v. Wilson. June 7, 1848.

CHARITABLE GIFT.—CONSTRUCTION.

Where lands were conveyed by deed to trustees for the benefit "of such poor and godly preachers for the time being of Christ's holy Gospel, and for such poor and godly widows for the time being of poor and godly preachers of Christ's holy Gospel, as the trustees for the time being should think fit, provided that the trustees should have a primary respect to such objects thereof as were then, or should afterwards be, in York, Yorkshire, or other northern counties in England, not excluding those in other places and counties as the trustees should think fit." And by another deed a was conveyed to the same trustees, with the following declaration:—"Let none of and

fame or report be admitted, but such as are poor and piously disposed and of the Protestant religion. Let every almsbody be one that can repeat by heart the Lord's Prayer, the Creed, and Ten Commandments, and Mr. Edward Bowles's Catechism." Held, that the two deeds must be taken together, and that English orthodox dissenters of Baptist and Independent congregations and Presbyterians were the proper recipients of the charity under the deeds.

By deed, bearing date January, 1704, Lady Hewley, who was a Protestant nonconformist, conveyed certain estates in Yorkshire to trustees, upon trust for the benefit "of such poor and godly preachers for the time being of Christ's holy Gospel, and for such poor and godly widows for the time being of poor and godly preachers of Christ's holy Gospel, as the trustees for the time being should think fit, for promoting the preaching of Christ's holy Gospel in such manner and in such places as the trustees should think fit, for educating such young men designed for the ministry of Christ's holy Gospel as the trustees should approve and think fit, and for relieving such godly persons in distress, being fit objects of her own and the trustees' charity, as the trustees should think fit, provided that the trustees and the managers for the time being should, in their dispositions and distributions of the aforesaid charities, have a primary respect to such objects thereof as aforesaid, as were then, or should afterwards be, in York, Yorkshire, or other northern counties in England, not excluding those in other places and counties as the trustees and managers should think fit." Power was given to the trustees, upon the death of any of them, to elect new ones. Subsequently, Lady Hewley conveyed an almshouse to the trustees of the deed of Jan., 1704, and by a writing under her hand, dated the 10th May, 1709, she laid down certain rules for the management of the almshouse or hospital, and, amongst other things, declared as follows:—"Let none of evil fame or report be admitted into the hospital, but such as are poor and piously disposed and of the Protestant religion. Let every almsbody be one that can repeat by heart the Lord's Prayer, the Creed, and Ten Commandments, and Mr. Edward Bowles's Catechism. Let all the almspeople, when not disabled by weakness, duly repair to some religious assembly of the Protestant religion every Lord's day forenoon and afternoon, and at other opportunities, to attend the ordinances of God." The charity, in the course of time, fell into the hands of the Unitarians, and an information was filed against them at the relation of the Independents, and in Dec., 1833, the Vice-Chancellor, by his judgment, declared that ministers and preachers of Unitarian belief and doctrine and their widows and members of their congregations were not fit objects of the charity, and he ordered the defendants to be removed from being trustees, and the Master was to appoint proper persons

in their places, and approve of a scheme for the application of the charity funds. This decision was affirmed on appeal on the 5th Feb., 1836, by Lord Lyndhurst, assisted by Mr. Justice Patteson and Mr. Baron Alderson. Afterwards a petition was presented by certain persons on behalf of the whole body of orthodox Presbyterian congregations of the north-west of England, and another petition by certain persons on behalf of the United Presbyterians of Lancashire, Carlisle, and Newcastle, both praying to be at liberty to go in before the Master and propose trustees. The petitions were allowed by the Lord Chancellor, and his decision was affirmed by the House of Lords, their lordships having taken the opinion of the seven Common Law Judges. The cause now came on on supplemental information. Fourteen gentlemen had been approved of as trustees and sub-trustees by the Master, all resident in England. Four of them were members of a Presbyterian congregation in connexion with the established Church of Scotland; four were in connexion with the Secession Church of Scotland; and the rest were Independents. The supplemental information sought to have it declared that the charity was only for the benefit of English orthodox dissenters of three classes, viz., Independents, Baptists, and English Presbyterians; and that no members of the Scotch Church or Secession Church were intended to take any benefit in the charity.

Mr. Bethell, Mr. Stuart, Mr. Rolt, and Mr. Chandless, appeared for the relators, arguing at very great length in favour of the Independents, Baptists, and English Presbyterians.

Mr. Swanston, Mr. J. Parker, Mr. Malins, Mr. Lloyd, and Mr. Broughton, appeared on the opposite side.

The Vice-Chancellor said, in determining the question, he was bound to look alone at the words of the deeds under which the property was given, and in doing so it was necessary for him to resort to the best evidence as to the meaning of the colloquial expressions of the time when the deeds were executed, and from what he could gather from the face of the deeds, it appeared to him an essentially English transaction: Lady Hewley herself was English, she had married an Englishman, she dealt with English property, and all her trustees were English. The deeds of 1704 and 1707 must be taken to form parts of the same transaction; that was the opinion of the judges, and he thought it was the fair and true legal view of the matter, to say that the two deeds were so blended that they could not be separated. The question then was, whether the members of the Kirk of Scotland or members of the Secession Church could be comprehended within the meaning of the words "Godly preachers of Christ's holy Gospel." It was clear from history that, though to a certain extent the Scotch Church had predominated, their system of Church government had never been carried into effect by law in England. After the act of Charles 2, the Toleration

Act was passed in 1689, then came the happy union, as it was called, in 1691, which was dissolved about four years afterwards, and that state of things remained the same at Lady Hewley's death. Therefore, in 1704, she was making a deed when the words "Godly preachers" would mean orthodox English dissenters of the time. That was his opinion of the words; and it was singular that Lady Hewley had herself expressed that the objects of her charity should be selected from Yorkshire and other northern counties. Now the word counties was essentially an English term, and never used in Scotland,—another reason for supposing that the charity was intended to be a purely English one. It therefore appeared to him that the recipients of the charity must not only be of a particular religious denomination, but also must have the local character of English, and unless it could be shown that there was a residence to a considerable extent of Scotch persons in England, the generality of the expression must prevail, and the charity must be considered as a provision for those who had the character of orthodox dissenters. He should therefore declare that the words "Godly preachers for the time being of Christ's holy Gospel," in the deeds of 1704 and 1707, described generally those who at the time of Lady Hewley's death were, and those who thereafter should be, orthodox English ministers of dissenting churches and congregations essentially and substantially in doctrine and discipline the same as the orthodox dissenting congregations existing in 1704 and 1707, and therefore, that orthodox English dissenters of Baptist and Independent congregations, and Presbyterians who were not united to or under the Kirk of Scotland, were alone entitled to take a benefit in the charity.

Vice-Chancellor Knight Bruce.

Firmin v. Pulham. Monday, Feb. 21, 1848.

CONDUCT OF TRUSTEE.—COSTS.

One of two trustees of a settlement, having refused to concur with his co-trustee in the transfer of the funds, the subject of the settlement, to the parties entitled, the Court, considering his refusal to be unreasonable, ordered him to pay the costs of the suit thereby rendered necessary,

By a deed of settlement, dated the 26th of December, 1821, made before the marriage of Harcourt Firmin and his intended wife, trusts of certain sums of stock were declared, which had been vested in J. B. Pulham and Edward Boodle for the wife for life, and after her decease for H. Firmin for life, and after the decease of the survivor, upon trust to transfer the same unto and between all and every the child and children of the marriage, &c., as H. Firmin and his wife should appoint, and in default thereof, as the survivor of them should appoint, and in default of appointment, upon trust for all and every the child and children of the marriage, equally to be divided be-

tween or amongst them, if more than one, and if but one then the whole for that one child; the shares of sons to be vested interests on their respectively attaining the age of 21 years, and the shares of daughters to be vested interests on their respectively attaining that age or marrying, which should first happen; and to be respectively assigned, transferred, and made over to such sons and daughters, or such only child accordingly, as soon after the same should respectively become vested, as circumstances would permit. There were two children only of the marriage:—a son who died under age, and a daughter, Frances Caroline Maria, who attained her age of 21 years on the 31st of March, 1846. The wife died in 1824. Neither power of appointment was exercised. In March, 1846, H. Firmin and his daughter took the opinion of Mr. Morgan the actuary as to the value of the daughter's reversionary interest, and he valued it at 3,929*l.* They then requested the trustees to raise 4,000*l.* cash and set it apart for the daughter, and transfer the remainder of the fund to H. Firmin, and they offered to execute a valid release to the trustees, and pay all their costs. The trustees were well aware of the state of the family, and that, subject to the father's interest, the daughter was absolutely entitled. Mr. Boodle was willing and consented to do as he was asked, but Mr. Pulham declined, alleging as a ground of refusal that he was advised that he could not safely do so. His refusal compelled the father and daughter to raise money by other means, and accordingly in October, 1846, they joined in a mortgage of their interests to secure 2,500*l.* with interest at 5*l.* per cent. Notice of this security was given to the trustees, and in December following Mr. Firmin, his daughter, and the mortgagees, by notice in writing, required them to transfer the fund into their joint names. At the same time they offered to execute to the trustees a valid release, and to pay them all their costs. Mr. Boodle was willing to do this, but Mr. Pulham still refused, and accordingly the suit was instituted by the mortgagees and mortgagees, praying a transfer to them. The defendant Boodle submitted to act as the Court should direct, but Mr. Pulham stated that his refusal was on the ground of a belief that undue influence had been exercised by the father over the daughter, and that the transfer would not be for her benefit.

Mr. Russell and Mr. Shapter, for the plaintiffs, cited *Willis v. Hiscox*, 4 Myl. & Cr. 197; *Campbell v. Hume*, 1 Y. & Coll. C. C. 664; *Hampshire v. Bradley*, 2 Coll. 34; and *Knight v. Warton*, 1 Russ. & Myl. 70.

Mr. Wigram and Mr. Caley Shadwell, for the defendants, cited the cases of *Playford v. Playford*, 4 Hare, 546; *Goldsmid v. Goldsmid*, Turn. & Russ. 445; and *Whitmarsh v. Robertson*, 1 Y. & Coll. C. C. 715.

His Honour said, the absolute title of the father and daughter in the first case, and of the four plaintiffs in the second case, depended on whether the mother was dead, whether

there were no other children, whether the young lady was of age, and whether no appointment had been made. Not one of these points was ever disputed or questioned. The only difficulty, and that made by one only of the trustees, was, that the father had contracted a second marriage, and that undue influence had been used. It was the duty of the trustee to satisfy himself that undue influence was not used, and that the daughter was to have her fair share. He, however, made no endeavour to satisfy himself on the subject, and has not suggested that there was any difficulty in his ascertaining these points. He has acted erroneously, and the suit was not instituted without sufficient reason. The fund must be transferred. Mr. Pulham must pay his own costs and those of the plaintiffs, but the plaintiffs must pay Mr. Boodic's costs and also the costs, charges, and expenses of Mr. Pulham before the suit.

Vice-Chancellor Wigram.

Barrett v. Black. Trinity Term, 1848.

COSTS.—ACCUMULATION.—HEIR.

Under a direction in a will to sell real estate, invest the proceeds, and accumulate the income thereof till the death of A., and then to divide the fund between the surviving issue of A.; if A. survive testator by more than 21 years, the heir is entitled to the income of the whole fund from the expiration of the 21 years to the death of A.; and he will take it as personal, not as real estate.

Where, in an administration suit, it appears the fund in Court consists of corpus and accumulated income, during more than 21 years from testator's death, quære, to what extent the income accumulated after the 21 years expired is liable to the costs of the suit, whether the corpus and accumulation within 21 years are to bear the costs in exoneration of, or rateably with, the subsequent accumulation.

THE testator, who died in May, 1820, directed his executors to sell his real and personal estate, invest the proceeds, and accumulate the income till the death of the survivor of his two sons and two daughters, and then to divide the fund amongst the surviving issue of his said children and the two children of a deceased daughter, *per stirpes*. Twenty-one years from the testator's decease having expired, and one of his sons being still alive, a suit was instituted for the administration of the estate. The personalty having been exhausted in payment of debts, the questions were, *first*, who was entitled to the income of the fund from the expiration of 21 years from the testator's death? and *secondly*, out of what fund the costs of the suit were to be paid.

The *Solicitor-General* and Mr. G. L. Russell appeared for the plaintiffs.

Mr. Francis Bayley for the personal representative of the testator's heir.

Mr. K. Parker, Mr. Temple, Mr. Wray, Mr. Maule, and Mr. Elderton, for other parties.

The first question was not argued, it being admitted on the part of the residuary legatees, the next of kin of the testator, and the heir-at-law of the testator's heir, (who had died pending the suit,) that the personal representative of the heir was entitled to the income of the fund from the expiration of the 21 years. Upon the other question

The *Solicitor-General* (Romilly) and Mr. G. L. Russell contended, that the costs must come out of the funds in Court, namely, the *corpus* and accumulations within 21 years, and the subsequent accumulations rateably. *Elborne v. Goode*, 14 Sim. 165.

Mr. Francis Bayley, for the personal representative of the heir, contended, that the costs of the suit should be paid out of the proceeds of the sale of the real estate, and the valid accumulation as the primary fund. *Eyre v. Marsden*, 4 Myl. & Cr. 231. In *Elburne v. Goode*, the Vice-Chancellor professed to follow *Eyre v. Marsden* upon the question of costs, but he decided in direct opposition to that case, for he ordered the costs to be paid out of the *corpus* and the accumulation within 21 years as one fund, and the subsequent accumulation as another fund, in the proportion which those funds bore to each other. In *Eyre v. Marsden*, as appeared from the Registrar's book, there was no apportionment of the general costs of the suit, between the funds of the residuary legatees and the funds of the heir-at-law and next of kin; but the general costs of the suit were paid out of the fund of the residuary legatees, that is, out of the *corpus* and the accumulation within 21 years exclusively. This appeared from the judgment of Lord Cottenham in the report of *Eyre v. Marsden*, in 6 Myl. & Cr., and from his mentioning that case in *Christian v. Forster*, 2 Phill. 164, to be precisely what his lordship intended. There was an additional reason in this case why the *corpus* should be applied before the accumulations, namely, that the fund was wholly the produce of real estate, and the *corpus* of real estate is applicable before the rents, which are applied only in the event of the *corpus* proving deficient.

The *Solicitor-General* observed, that the order in *Eyre v. Marsden*, as drawn up, was not in accordance with Lord Cottenham's judgment.

Mr. Temple said, the minutes of Lord Cottenham's order in *Eyre v. Marsden* were settled with great care by Mr. Treslove.

Sir James Wigram, V. C., intimated that he thought Lord Cottenham intended to decide in *Eyre v. Marsden* as the Vice-Chancellor of England in *Elburne v. Goode* supposed his lordship to have decided in *Eyre v. Marsden*; and that the question as to costs was rightly decided in *Elburne v. Goode*. He certainly meant, however, to follow *Eyre v. Marsden*, and he should make the same declaration as was made by Lord Cottenham in that case, namely, that the costs were to be paid out of the general estate including the valid accumu-

lations; and he should leave it to the parties to work out that declaration.*

Court of Exchequer.

Walker and others v. M'Donald. June 7 & 8, 1848.

BILL OF EXCHANGE.—SPECIAL INDORSEMENT.—LIABILITY OF SPECIAL INDORSER TO HIS INDORSEE.

Where a party indorses a bill of exchange specially to A., B., and C. by name, who again indorse the bill, not by name, but by the title under which they carry on business, a presentment for payment by the subsequent indorsee is nevertheless a good presentment as against the party who indorsed specially.

After a general indorsement of a bill of exchange the operation of such indorsement cannot be limited by a special endorsement.

SPECIAL CASE. Action by plaintiffs as the holders of a bill of exchange, against defendant as indorsee. The defendant, who had received the bill from his bankers, to whom it had been indorsed generally, had indorsed it specially to the plaintiffs thus:—

“Pay Messrs. Barber, Walker, & Co.
“WM. M'DONALD,”

and then remitted it to them. The plaintiffs, upon receipt of the bill, paid it into their bankers, but did not indorse it Barber, Walker, and Co., in conformity with the special indorsement to them, but indorsed it “The Eastwood Company,” they carrying on business under that title. The bill then passed through various other hands and ultimately was indorsed to Jones, Lloyd, & Co., who presented it according to the acceptance for payment: payment was refused for want of notice. There being on the bill a reference to Cunliffe & Co., “in case of need,” it was presented to them, but they refused to pay it in consequence of the irregularity of the indorsement. Application was then made to the defendant for the amount, which not being paid, this action was commenced.

Crompton, for the plaintiffs. The question here amounts simply to this:—Could the party presenting the bill have given a good discharge? The case of *Leonard v. Wilson*, 2 C. & M., 589, is an express authority. He also cited *Smith v. Clarke*, Peake, 295.

Bovill, for the defendant. A decision adverse to his client would entirely upset the usage long established amongst bankers, never to pay a bill unless it be regularly indorsed. This was not a question as to the liability of the acceptor, but of an indorser who indorsed specially to pay to certain parties by whom there had been no presentment, and, as it would appear in the bill, there had been no presentment by any person entitled to demand

payment. Suppose Barber, Walker, and Co. had never indorsed the bill, but passed it by delivery only, no subsequent holder could have claimed as against them. [*Alderson*, B. You say it must be such a presentment as would make the present defendants liable upon presentment by the holder.] That was what was contended for. The defendant was liable only upon the contract which he had entered into,—a contract that if Barber, Walker, & Co., or any person claiming through them, should not be paid upon presentment of the bill, and notice thereof should be given to the defendant, he would pay it. Now if the indorsements had been set out fully in the declaration according to the old form of pleading, this liability on the part of the defendant could never have been made to appear upon the declaration, and consequently cannot now under the present form of pleading be made out by the evidence. [*Pollock*, C. B. The difficulty here arises from a special indorsement following a general indorsement. I have always understood that the special cannot operate to restrain the general indorsement. *Crompton*. That is the point decided in *Smith v. Clarke*.] That was an action against a previous indorser, not against the person who indorsed specially, therefore distinguishable from this case. Here the defendants by their indorsement say, we will pay you or your order if you indorse it. The defendant does not indorse, inasmuch as an indorsement by A. B. is not a good indorsement by C. D.; therefore, the condition precedent to the fulfilment of the promise was not performed, and unless the plaintiff can make out a title through the special indorser, the special indorser is not liable.

Crompton, in reply. The custom of bankers is not of that general character contended for: it is a rule established for their protection to be carried out under circumstances when they have no knowledge of the parties presenting the bill, but if the bankers know those parties, they pay the bill. In *Leonard v. Wilson*, it was contended the bankers paid at their own risk; but Lord Lyndhurst, C. B., said no, that the party might have maintained an action upon refusal. The fallacy on the other side arises from saying that the presentment must be by somebody under the special indorsement. If there had been no indorsement in blank, the presentment would have been perfectly good as against the present defendant, because it would have been by a person capable of giving a discharge. Therefore, as well upon the authorities as upon the general principle, the plaintiffs were entitled to recover.

Cur. ad. vult.

Pollock, C. B., June 8th, now gave judgment. And after stating the facts, said,—The questions are, was the bill duly presented for payment? was the acceptor bound to pay the bill upon that presentment? We think he was, and that the case of *Leonard v. Wilson* is precisely in point. In that case the question now before the Court was necessarily involved. What is the liability

* The case was not again mentioned, it being found, as the reporter has been informed, that the whole fund was scarcely, if at all, more than sufficient for the payment of the costs.

which the indorser takes upon himself? It is this,—I promise to pay any one authorised by my special indorser to receive the money, if the acceptor fails to pay. The special indorsement, under the circumstances, makes no difference whatever. It would be most incon-

venient to have two sorts of presentment, one to bind a certain class of indorsers, another, another class of indorsers. Upon the authority of *Leonard v. Wilson*, and upon the concurrent opinion of Westminster Hall upon this matter, we think the plaintiffs are entitled to recover.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Law of Costs.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, p. 169, 190. •

Bankruptcy, p. 213.

Lunacy, p. 216.]

AFFIDAVIT OF DEBT.

A plaintiff making an affidavit of debt under the 5 & 6 Vict. c. 122, should claim what remains due to him after giving credit for what is due from him to the defendant. Where a plaintiff erroneously made an affidavit of debt claiming 10*l.* more than was really due, but the mistake was explained by the particulars of demand annexed to the affidavit, the Court refused to allow the defendant his costs of suit under the 19th section of the act. *Wilding v. Temperley*, 36 L. O. 54.

AMENDING BILL.

Upon the allowance of a demurrer, the question of costs and liberty to amend are in the discretion of the Court; and for the purpose of determining them, the Court, to some extent, has regard to the statements in the bill, though admitted only for the purposes of the demurrer. *Schneider v. Lizardi*, 9 Beav. 461.

See *Security for Costs*.

APPEAL.

Where, after the trial of an issue directed by the Court below, the party who failed appealed from the order directing it, the Lord Chancellor, in reversing the order and directing a new issue, refused the other party the costs of the appeal, but reserved them. *Parker v. Morrell*, 2 Phill. 453.

CONTEMPT.

Taxation.—The proceedings under an order for the taxation of costs are not irregular, because the party prosecuting them may be in

contempt during part of the time. *Newton v. Ricketts*, 36 L. O. 11.

COUNSEL.

Hearing of cause.—On taxation of costs as between party and party, the costs of a brief on the hearing for a junior counsel who drew the pleadings, but was subsequently called within the Bar, will be allowed, notwithstanding briefs on the hearing were also delivered to another Queen's counsel and a junior. *Carter v. Barnard*, 36 L. O. 118.

COURT OF REQUESTS.

1. *Suggestion*.—At the time the debt, for which an action was brought, was contracted, the plaintiff asked the defendant where he resided, and was told by him that he resided at No. 4, Manchester Buildings, in consequence of which the goods were sent there, and repeated conversations were had with the defendant there, in none of which did he give the plaintiff any reason to think that he had any other residence. The writ described him as of Manchester Buildings, and to the writ he appeared and pleaded, and no objection was made to the description of the residence until after trial and verdict: *Held*, on motion to enter a suggestion under a Court of Requests' Act, that the defendant was precluded from showing that in point of fact he resided elsewhere, and within the jurisdiction of the Court of Requests: *Held*, also, on motion to set aside the taxation of costs, the final judgment signed on the above verdict, and writ of execution issued, that, as there was no suggestion on the roll, the plaintiff's judgment for costs was, on the face of it, regular. *Banks v. Newton*, 4 D. & L. 632.

2. The Isle of Wight Court of Requests Act, (46 G. 3, c. lxxvi., s. 40,) enacts, that "if any action for any debt recoverable by virtue of this act in the said Court of Requests, shall be commenced in any other Court, the plaintiff in such action, &c., "shall not, by reason of a verdict for him," &c., "or otherwise, have or be entitled to any costs whatever." A writ of summons was sued out in this Court on the 1st of Dec., 1846, for a debt recoverable in the Court of Requests, but was not served till the 28th of March, and judgment by default signed on the 20th of April following. On the 22nd of March, a County Court was substituted for the Court of Requests, under the 9 & 10 Vict. c. 95: *Held*, on motion to enter a suggestion to deprive the plaintiff of costs, under the

Court of Requests' Act, that that act was not repealed by the 9 & 10 Vict. c. 95, s. 5, so far as related to the depriving the plaintiffs of costs.

Held, also, that the motion was not too late, although judgment by default had been signed in an action of debt, and execution issued. *Warburg v. Read*, 5 D. & L. 71.

Case cited in the judgment: *Burbidge v. Marvin*, 1 D. & L. 605.

COUNTY COURT.

1. *Bill of Exchange.—Suggestion to deprive plaintiff of costs.*—The plaintiff brought an action in the Superior Court against the defendant, as the acceptor of a bill of exchange for 12*l.*, and obtained a verdict for that amount, upon which an application was made to enter a suggestion on the roll to deprive the plaintiff of his costs under the 129th section of 9 & 10 Vict. c. 95. The affidavit stated all the facts necessary to show that the defendant was entitled to be sued in the County Court of Clerkenwell, but omitted to state that the judge who tried the cause did not grant a certificate to the plaintiff, that the cause was a proper one to be brought in the Superior Court, an objection being taken to the affidavit on this ground: *Held*, that it was not necessary for the defendant to negative that fact, for it being in the nature of an exception, should come from the plaintiff, if he relied on it, to show that the certificate had been given.

Held, also, that bills of exchange are included in the general words of the 58th section, and not being within the excepted cases, the defendant was entitled to enter the suggestion under the 129th section to deprive the plaintiff of his costs. *Nind v. Rhodes*, 36 L. O. 69.

2. *Suggestion to deprive of costs.—Insufficiency of affidavit.*—To support a rule for entering a suggestion upon the record, in order to deprive a plaintiff of costs, under the County Courts' Act, 9 & 10 Vict. c. 95, s. 129, the defendant's affidavits must negative the causes specified in the 128th section, and by a reference thereto, excepted from the operation of the 129th section, which takes away the right to costs. *Meetan v. Nichols*, 36 L. O. 149.

3. The affidavit in support of a rule to enter a suggestion to deprive a plaintiff of costs under the County Courts' Act, 9 & 10 Vict. c. 95, s. 129, must show that the cause of action arose within the jurisdiction of the County Court within which the defendant dwelt or carried on business at the time of the action brought, as required by the 128th section. *Bailey v. Robson*, 36 L. O. 168.

4. Where the affidavit in support of an application to enter a suggestion on the record to deprive the plaintiff of costs, under the 9 & 10 Vict. c. 95, omitted to state that the defendant was within the jurisdiction of the Small Debts Court, "at the time of the action brought:" *Held*, that it was insufficient to warrant the granting of a rule to enter the suggestion. *Mathew v. Broughall*, 36 L. O. 190.

DISMISSING BILL.

Costs of motion.—A defendant, whose motion to dismiss was answered by a replication, refusing to accept costs for preparing and serving the notice, and proceeding with his motion, it was refused with costs, minus 20*s.* *Wright v. Angle*, 6 Hare, 109.

Case cited in the judgment: *Piper v. Gittens*, 11 Sim. 282.

EXECUTION FOR COSTS ONLY.

Writ of error.—As to whether the stat. 7 & 8 Vict. c. 96, s. 57, operates to protect a plaintiff who had been nonsuited from being taken in execution under a *ca. sa.* for costs. *Quære.*

In such a case, however, the Court refused to treat as frivolous a writ of error founded on the award of a writ of *ca. sa.* in the record of judgment, and to allow the defendant to issue execution notwithstanding. *Newton v. Lora Albert Conyngham*, 35 L. O. 614.

EXECUTORS.

On an application under the 3 & 4 W. 4, c. 42, s. 31, to exempt plaintiffs who are executors from costs, the Court will not look so much as to whether the plaintiffs have proceeded *bonâ fide* in the action, and with a fair and reasonable belief as to the justice of their claim, as to whether the defendant has been guilty of any misrepresentation or deception to induce them to bring their action.

Mere silence by a defendant as to the nature of his defence, is not sufficient ground for such an application, although it may have induced the plaintiffs to proceed with the action. *Birkhead v. North*, 4 D. & L. 732.

Case cited in the judgment: *Southgate v. Crowley*, 1 Bing. N. C. 522; 1 Scott, 374.

IMPERTINENCE.

Petition.—A mere suggestion by counsel that a petition is impertinent by reason of its length is not a sufficient ground for the Court to proceed under the 122nd Order of May, 1845, to make the petitioner pay the costs occasioned by the unnecessary or improper parts of the petition. *Ex parte Gotobed*, 35 L. O. 589.

INJUNCTION.

See *Patent*.

LANDS CLAUSES CONSOLIDATION ACT.

Where a railway company purchase lands belonging to a tenant for life, but subject to an annuity in favour of two persons prior to the estate for life, on a petition for payment of the purchase-money out of Court and investment, the railway company ordered to pay the costs of both the annuitants. *In re the London and North-Western Railway Company*, 36 L. O. 11.

PATENT.

Injunction.—Upon the invasion of a patent right, the party complaining has a right to the protection of an injunction, although the other party may promise to commit no further in-

fringement, and may offer to pay the costs of preparing the bill; and if the defendant do not, after injunction obtained, offer to pay the costs of it, the plaintiff may bring the suit to a hearing, and will be entitled to the costs of the suit.

Quere, whether in such a case the Court will give an account of damages. *Geary v. Norton*, 1 De G. & S. 9.

PAUPER.

Equity of redemption.—A plaintiff, suing in *forma pauperis*, brought his bill to redeem two estates, but was held to be entitled to redeem one only, and the mortgagee was allowed to add his costs of the suit; in respect of both estates, to the principal and interest due to him on the security of the redeemable estate. *Batchelor v. Middleton*, 6 Hare, 86.

PETITION.

See *Impertinence; Stop Order*.

REMANET.

In trespass, the defendants pleaded four pleas, one of which was bad. The cause stood for trial at the Summer Assizes, 1844, but was then made a remanet. The defendants afterwards obtained leave to amend, by substituting another plea in the room of the bad one, on payment of the costs of the amendment, which were paid. The cause was tried at the Spring Assizes, 1845, when the defendants had a verdict on the issue on the amended plea, and the plaintiff on the other three issues: *Held*, that the plaintiff was entitled to the costs of the remanet. *Waller v. Blacklock*, 15 M. & W. 716.

SECURITY FOR COSTS.

Demurrer.—*Amendment*.—An order for the plaintiff to give security for costs may be obtained, as of course, upon a statement showing that he is out of the jurisdiction, introduced by amendment after a demurrer allowed, although the defendant, knowing the plaintiff to be out of the jurisdiction, has previously permitted him to proceed in the cause without requiring security. *Wyllie v. Ellice*, 36 L. O. 165.

SMALL DEBTS' ACT.

See *County Court*.

STOP ORDER.

Where a petition was presented by parties entitled to a fund in Court which had become distributable, for payment to themselves and a mortgagee, on a stop order being applied for by the mortgagee, he was refused the costs of his application. *Hoole v. Roberts*, 35 L. O. 560.

SUGGESTION.

See *Court of Requests; County Courts*.

TAXATION.

1. *Service of warrant*.—*Parties*.—A defendant, against whom the bill has been dismissed with costs, to be paid by the plaintiff, and received by the plaintiff out of the estate to be

administered in the cause, is not bound to serve the parties interested in the estate with a warrant to attend the taxation, but may proceed with the taxation, serving the plaintiff only with the warrant. *Lauder v. Ingersole*, 6 Hare, 73.

2. *Notice*.—A notice of taxation dated 23rd February, for "to-morrow," was put through the door of the office of the plaintiff's attorney, between 7 and 8 o'clock in the evening of the 24th, no one being in attendance. The clerk on receiving it the next day, supposed from the date of the notice, that the time for taxation had passed: *Held*, no ground for reviewing the taxation, and that the notice was sufficient. *Grant v. Mackenzie*, 5 D. & L. 129.

3. *Review*.—Where, in an action for defamation, in which the declaration contained three counts, a verdict passed at the time for the defendant on the issue of not guilty as to the two first counts, and for the plaintiff on the issue of not guilty to the third; and for the plaintiff on certain special pleas of justification; and judgment for the plaintiff on the issue if not guilty to the third count, was afterwards arrested, on the ground of the insufficiency of the count: *Held*, on motion to review the taxation, that the defendant was not entitled to the general costs of the cause. *James v. Brook*, 4 D. & L. 577.

4. *Submission of defendant to plaintiff's demand*.—*Interlocutory application*.—Where a bill had been filed, and the defendant thereupon submitted to the demand of the plaintiff; on an application by the plaintiff that the costs of the suit might be taxed and paid by the defendant, without any further proceeding in the cause being taken, order made accordingly. *Winter v. Vizetelli*, 36 L. O. 53.

See *Contempt*.

TRUSTEE.

1. *Fraud alleged, but not proved*.—A bill contained allegations of great fraud against trustees, which all failed. The trustees were removed, but not, however, on the ground of misconduct: *Held*, that they were entitled to the costs of the whole suit. *Passingham v. Sherborn*, 9 Beav. 424.

2. *Account*.—*Charity*.—Though a trustee for a public charity is not called on for 20 years by the body to whom he is accountable to account, yet it is his duty to render his accounts to such body, without requisition; and, if he do not, he is liable to the costs of an information filed to compel an account, even although in the result the charity prove to be indebted to such trustee.

A trustee for a charity, against whom an information was properly filed, made a case by his answer, from which it must have been manifest that the trustee was not a debtor to the charity, and that the result of taking the accounts would not be of advantage to the charity. A decree was nevertheless sought and obtained, directing the accounts to be taken: *Held*, that no costs subsequent to the hearing ought to be given on either side. *Attorney-General v. Gibbs*, 1 De G. & S. 156.

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SATURDAY, JULY 22, 1848.

‘Quod magis ad nos
Pertinet, et nescire malum est, agitamus.’

HORAT.

OPERATION OF THE COUNTY COURTS.

THE proverb that “a new broom sweeps clean,” is contradicted by the new County Courts. They are amongst the latest creations of the spirit of legal change. Little more than twelve months have passed since they came into operation, and they have excited as great a variety of complaints, and as large an amount of dissatisfaction, as any legal institutions of the longest standing. The representatives of that branch of the government, within whose department the superintendence of such matters lies, frankly admit the evils with which the present system is fraught, but they have not been able to determine upon the appropriate remedy, and it now seems more than probable, that another year will elapse before any measure is passed for altering the constitution or practice of the County Courts.

One of the grievances lately brought under the consideration of parliament has been, the inability of suitors to procure the necessary advice and assistance, by reason of the non-residence of the clerks in the Court towns. Sir James Graham alluded, in the House of Commons, to an instance in which a County Court clerk resided above 60 miles from any town in which a Court was holden, and the Home Secretary admitted that his attention had been directed to similar instances, and that he was in communication with the judges of the County Courts on the subject. We appre-

hend it will be found in this case, as in many others, that the fault rests rather with the law than the officer. As these Courts are now constituted, it does not seem to be reasonable to expect that a competent person should be found in every Court town, to perform the duties which devolve upon the clerk, and if the officer does not reside in the town or its immediate vicinity, so as to be enabled to attend every day during office hours, it seems to be very immaterial, so far as the public are concerned, how far from the town he may reside.

The 24th section of the act (9 & 10 Vict. c. 95,) provides, that for every Court there shall be a clerk, who shall be an attorney of one of the Superior Courts, appointed by the judge, subject to the approval of the Lord Chancellor; and until otherwise directed by her Majesty, with the advice of her Privy Council, every such clerk shall be paid by fees, and in cases requiring the same, such *assistant clerks* as may be necessary shall be provided and *paid by the clerk* of the Court. By the following sections it is further provided, that in populous districts the Lord Chancellor may direct two persons to be appointed to execute jointly the office of clerk, dividing the duties and emoluments; and, in case of illness, &c., the clerk, with the approval of the judge, may appoint a deputy. The duties of the clerks are thus described by the 27th section:—The clerk of the Court, with such assistant clerks as aforesaid, shall issue all summonses, warrants, precepts, and writs of execution, and register all

orders and judgments, and keep an account of all fees and fines paid or payable, and of all monies paid into and out of Court, and shall enter an account of all such fees, fines, and monies in a book kept for that purpose, and at such times as directed submit his accounts to be audited or settled by the treasurer. For the discharge of these onerous and multifarious duties the clerk, as our readers are aware, is paid by fees, taken according to a schedule annexed to the act, which fees may be reduced, but cannot be augmented, by the Secretary for the Home Department, with the consent of the Treasury. As already stated, it is provided that her Majesty, with the advice of the Privy Council, may order the officers of the Court to be paid by salaries instead of fees, but that the greatest salaries receivable shall be 1,200*l.* by a judge, and 600*l.* by a clerk, exclusive of all salaries to his clerks employed in the business of the Court, and other expenses incidental to his office, (ss. 39 & 40,) but the advisers of the Crown have not yet thought fit to recommend the exercise of the power conferred by the sections last referred to.

The system of payment to officers by fees, condemned and abolished in the Superior Courts, where everything is within the knowledge and observation of the public and the legal profession, was deemed suitable and adopted in respect of the officers of the County Courts, which are often held in remote localities, frequented by suitors not always of the most intelligent class, and rarely attended by professional men of standing or respectability. In some districts the clerk has a dozen or even a greater number of Court towns to attend. He conceives he performs his duty by attending the Court when the judge is presiding, and exercising a general superintendence over his assistants. An office must be opened in each town, however, for issuing summonses and warrants, paying and receiving money, and the performance of the various other duties which do not require the personal presence of the judge. In each Court town of a district, therefore, there must be an assistant clerk, who is paid by the clerk of the Court out of the fees received under the act, and the return presented to the House of Commons some short time since, shows that the fees received by each clerk are most unequal, and bear no proportion to the number of towns comprised in his district, or the number of assistants he is compelled to employ. The clerks' fees in nine months, ending on

the 31st December last, in the Chester district, amounted to 2,119*l.*, and in the Dorsetshire district, only to 717*l.* Assuming that a clerk was compelled to keep half-a-dozen assistants—a single clerk in each of six towns—how is it possible he could provide and pay competent persons out of the fees provided by the act, and find a reasonable compensation for his own labour and responsibility out of the surplus? As may be expected, in many instances, persons are found acting as assistant clerks who are, from want of education and experience in matters connected with the administration of justice, not only wholly incapable of usefully advising or assisting others, but who are positively incompetent to discharge the ordinary routine duties of the office.

The consequences of this unsatisfactory state of things will be aggravated by the decision of the Court of Queen's Bench, in a case of *Ex parte Lee*, in which judgment was pronounced shortly before the departure of the judges on circuit. In that case an attorney was retained for a client in the County Court in a case where the damage amounted to more than 40*s.* and less than 5*l.* He sought to charge his client for the services actually performed according to the usual scale of charges, but upon referring the bill of costs to the Master for taxation, that officer was of opinion that he was prohibited by the act from allowing a larger sum to the attorney under any circumstances than 10*s.* The Court of Queen's Bench, after taking time to deliberate, came to the conclusion that the Master had put the true construction upon the 91st section; and that no attorney was entitled to recover from his own client, any more than from the adverse party, a greater sum than was provided for by the act.

The provision which admits of this construction, as we had before occasion to remark, is framed in direct opposition to the recommendation of the Common Law Commissioners, who, in their fifth report, referring to this subject, say:—"In the arrangement of costs it is necessary to guard against two extremes, each of which would be attended with mischief to the suitor; for whilst the practice of an inferior Court must be regulated by a principle of strict economy, it is of importance to guard against the mischief which would result from such a reduction of costs as would necessarily exclude the more respectable members of the profession from managing

suits, and throw the business into the hands of needy and unprincipled practitioners." Again they say,—“It appears to us, after much consideration, that professional aid in the conduct of a cause, even where the demand does not exceed 5*l.*, ought not to be excluded; and to require all to appear and plead their causes in person, without regard to age, sex, condition, or mental capacity, would frequently be productive of hardship, if not of positive injustice.” The act has been framed so as to produce, not only the mischief and injustice which the Common Law Commissioners suggested as certain to occur, if respectable practitioners were excluded, and parties left to conduct their own causes, without reference to the relative capacity and integrity of the individuals, but an additional element of evil has been introduced, by paying the officers of the Court upon a principle and in a manner, which causes the least affluent and most numerous section of the community to associate in their own minds the administration of justice and the exactions of the chandler's shop.

It appears by the return already alluded to, that in the course of nine months the amount of fees received in the County Courts was not less than 255,437*l.*, whilst the number of plaintiffs that reached a hearing did not exceed 276,000. More than half of the whole number of plaintiffs entered were for sums not exceeding 2*l.*; so that, upon an average, nearly 1*l.* has been paid in fees for every cause that came to a hearing. From the ingenuity which we understand is displayed in multiplying the occasions upon which fees are payable, and the exemplary diligence manifested in the collection, we should not be surprised to find that the return for the second nine months, which will terminate on the 30th of September, exhibits an augmentation in the receipt of Court fees, sufficient to render a Chancellor of the Exchequer, susceptible of ordinary weakness, envious. The longer the fee system is continued the more unwilling will the officers of the County Courts be to fall back upon the limited salaries provided by the act, and should it endure much longer, no doubt its abolition will be followed by a claim for compensation.

Perhaps it is not to be regretted that the government do not propose any immediate amendment of the County Courts Act. The principle upon which it was framed, of discountenancing, and in effect prohibiting, suitors from obtaining the assistance of

competent persons, is so essentially defective, and evinces such an ignorance of the wants of society, that it is desirable its operation should be universally felt and understood.

THE BANKRUPT LAW CONSOLIDATION BILL.

WE understand that the Select Committee to which the House of Lords referred this bill, has commenced its labours, and that there is some probability of a report being made before the termination of the present Session. The sooner all the information that can be collected is obtained the better, but we should greatly regret anything like precipitation in a matter of so much importance, and which has already been the subject of such repeated disappointments. The evidence taken during the present Session should be printed, and the bill re-introduced at the commencement of the next Session.

As the framer has taken for his model in point of form the bill drawn by the Criminal Law Commissioners, it would be desirable that the course pursued in obtaining information and suggestions from practical men by the Commissioners should be adopted with regard to the Bankruptcy Law Amendment Bill. The Commissioners caused a number of questions to be framed, relating to different branches of their inquiry, which were numerically arranged, printed, and sent round to every person who was suggested as capable of giving, or willing to give, assistance. By this means a fund of information, and some most valuable suggestions, were obtained, which might probably have been lost, but for this mode of proceeding.

The practice varies so much before each of the Commissioners, and the rules propounded and acted upon are, in general, so vague, ill-defined, and contradictory, that we doubt if any individual, however observant or intelligent, can be said to be a master of every branch of the subject. On the other hand, we are satisfied that no person who has practised in bankruptcy, either as a barrister, a solicitor, or even as an accountant, could fail, if he thought fit, to suggest alterations which would be at least deserving of consideration. If the Commissioners and their officers are the only persons to be consulted, without meaning them any disrespect individually or collectively, we are satisfied the bill before parliament will be as unsatisfactory to the

profession and the public as any of its predecessors.

Whilst alluding to this subject, we may refer to a communication from an intelligent correspondent, who expresses some well-founded doubts, whether the statement made by Lord Brougham in the House of Lords, as to the number of appeals from the decisions of the Bankrupt Commissioners, as mentioned in our last number, *ante*, p. 218,) can be correct? His lordship is said to have stated, that the average number of appeals did not exceed fifteen annually, and our correspondent suggests, that this statement could only have referred to appeals from the decisions of a single Commissioner to a Subdivision Court, and not to the cases in which an appeal is taken upon petition to the Court of Vice-Chancellor Knight Bruce, exercising the powers of the Court of Review, under the act of last Session, (10 & 11 Vict. c. 102, s. 2). It is truly observed, that bankrupt petitions appear in the Vice-Chancellor's paper, two days in every week, and that the average number is between a dozen and a score. A majority of those petitions relate to disputed adjudications, the admission or rejection of proofs of debts, and other matters previously determined by a Commissioner. The aggregate number in the course of the year must greatly exceed the number which Lord Brougham is supposed to have stated, and, upon consideration, it is quite obvious that his lordship has been misreported in this matter, or was misinformed as to the fact.

INEQUALITY OF THE STAMP LAWS.

SUGGESTED AMENDMENTS.—CERTIFICATE DUTY.

A "LONDON SOLICITOR" has sent a circular to his brethren, showing the unequal bearing of the existing Stamp Laws, with suggestions for their amendment. He observes, the larger the transaction the better in general can it afford the tax, but that justice seems at least to require the equality of taxation.

We shall select some of his examples, showing the vast disproportion both of the tax on small and on large sums :

"On a bond or on a warrant of attorney given as security for payment of money the duty on a sum of 50*l.* and not exceeding 100*l.* is 1*l.* 10*s.*

This is a medium rate of 2 per cent.

From 300*l.* to 500*l.*, 4*l.* This is 1 per cent.

From 500*l.* to 1,000*l.*, 5*l.* This is 13*s.* 4*d.* per cent.

From 4,000*l.* to 5,000*l.*, 9*l.* This is 4*s.* per cent.

From 15,000*l.* to 20,000*l.*, 20*l.* This is 2*s.* 3*d.* per cent."

The suggestion is, that an even sum of 1 per cent. be imposed, or more, if an increased revenue be required.

A covenant for payment of money is exempt from the *ad valorem* duty, although in its legal effect this security is scarcely distinguishable from a bond; it is suggested it should be subject to the same duty.

It is also recommended that the duty on mortgages should be on the same scale as on bonds—1 per cent.

With regard to settlements, it appears that on sums under 1,000*l.*, the duty amounts to a per centage of 7*s.*, whilst on all sums above that amount it averages 2*s.* 3*d.* It is proposed on this class of deeds to make an equal rate of 2½ per cent., and it is urged, that as settlements are as effectual for the devolution of personal property as wills, these should, therefore, at least pay the same duty as probates, if not a higher one, since they are the means of evading legacy duty.

On settlements of railway stock or shares, which are at present exempt from duty, a rate of 2½ per cent. is suggested to be imposed. It seems that this description of property was not contemplated when the act was passed.

The probate duty on personal property is also levied on an unequal principle. Thus,—

"On 200*l.* and not exceeding 300*l.*, the medium rate is 2*l.* per cent. On 4,000*l.* and not exceeding 5,000*l.*, it is 1*l.* 15*s.* On 16,000*l.* and not exceeding 18,000*l.*, it is 1*l.* 13*s.* On 45,000*l.* and not exceeding 50,000*l.*, it is 1*l.* 8*s.* On 90,000*l.* and not exceeding 100,000*l.*, it is 1*l.* 8*s.* On 700,000*l.* and not exceeding 800,000*l.*, it is 1*l.* 8*s.* And on 1,000,000*l.* and upwards, it is 1*l.* 10*s.*"

It is proposed that sums below 200*l.* should be exempted, and that an equal rate of 2 per cent. should be imposed on all sums above that amount,—less if an additional revenue is not required, and more if an additional revenue be required. This is the more reasonable since equality in taxation is recognized already in the legacy duties which are assessed at an equal rate, whether the property be large or small. If any distinction is to be made, it might with justice be on a scale increasing with the amount of the property.

By the re-adjustment of these Stamps, the Annual Certificate Duty might be abolished, without injury to the revenue.

THE ANNUAL CERTIFICATE TAX.

It will doubtless have been observed in the public journals, that on Tuesday last, the 10th instant, when Lord Robert Grosvenor's motion for bringing in the bill to repeal this tax stood first upon the list, the House was "counted out," and the motion "dropped." The List of Members in the House at the time it was counted is not quite correct, for we know of the presence at least of two solicitors whose names are omitted.

These delays are most unfortunate. It may be no consolation, but it appears that the government itself, with regard to many of its own projects, is in no better situation than the attorneys. The Prime Minister is already obliged to defer until another Session the further consideration of several important measures, such as the Navigation Laws, the Jewish Disabilities, the Law of Election in Ireland; and it is not improbable that other bills will be lost before the close of the Session.

We understand that the Chancellor of the Exchequer will not consent even to the introduction of the Bill to Repeal the Certificate Duty; for whilst it seems that he cannot deny the objectionable nature of the tax, nor the justice of the claim to redress, he thinks there are other taxes equally or more entitled to remission, and apprehends, if he assents to the introduction of the measure, that it may gain some precedence. The Right Honourable Gentleman might provide against this inference by such statement as he may feel justified in making; but we cannot perceive any just ground for rejecting the bill *in limine*. Let the House have the subject fairly before it for consideration, or let it be understood that an early amendment of the Stamp Laws will take place, and this subject be included in the scheme, or that it will form part of a general revision of the system of taxation, and the profession will "bide its time," though we think the claim stands upon such peculiar grounds that it might be dealt with separately.

Our correspondent P. R. A. thus replies to our last observations:—

"The payment of small sums, shillings and sixpences, by attorneys, as proposed, may be a 'Tax on the Administration of Justice, to be paid by attorneys.' I mean it as a substitute for the tax on the same administration paid by the said parties in a lumping sum of 12*l.*, which crushes two-thirds of our profession by coming

at once, and falls on those who can least afford it and have least business. These evils will be avoided by my plan, and if those who have the power are really desirous of doing justice and doing away with at least two-thirds of the injustice and oppression, they can do so without injuring the revenue.

"You say this tax will be repealed with more difficulty than the present duty; there I must bow to your opinion, though I do not know on what it is founded; for assuming it to be right, the change will be so beneficial and the injustice so lessened, that the risk you apprehend may well be encountered."

PROPOSED ABOLITION OF GRAND JURIES.

The following is a copy of a presentment by the Grand Jury to the Judges presiding at the Central Criminal Court, on the 18th day of May last, recommending the Abolition of Grand Juries within the jurisdiction of that Court:—

"*Middlesex Grand Jury.*

"*Seventh Session, May, 1848.*

"Resolved,—That the Grand Jury of the Central Criminal Court ought, in the opinion of this Grand Jury, to be abolished within the limits of the stipendiary magistrates. That in London and the suburbs, and within the jurisdiction of this Court, the accused parties are committed for trial by an intelligent body of stipendiary magistrates, responsible to the power by whom they are appointed; that such magistrates can have no local or personal interest whatever to bias judgment, and whose proceedings are conducted in open Courts, and reported daily by the public press. The further inquiry by the Grand Jury is therefore particularly unnecessary within the jurisdiction of this Court; and it also appears to us, that it frustrates the ends of justice, and is often the means of extortion, and of innocent parties being unjustly accused.

"That it thus affords an opportunity for corruption, and for tampering with prosecutors and witnesses, to induce them to alter or suppress their evidence given before the police magistrates, and thus is a means of wealthy offenders escaping from justice. It entails great delay and loss of time upon parties prosecuting: to the humbler classes, this delay and consequent idleness is demoralizing, and the middle and richer classes will frequently allow an offender to pass unpunished, rather than prosecute in the Central Criminal Court.

"The parties are compelled frequently to attend before the magistrates two or three times before the depositions are completed, and the case ready to be sent for trial. They then have again to attend before the Grand Jury, and perhaps are kept waiting, on an average, two days. After which they have again to

wait, frequently for several days, until the cause is tried.

"In cases where the bill is ignored before the Grand Jury, if it be in consequence of insufficient evidence, in addition to the loss of time to parties so attending to prosecute, a great injustice is done to them, and to the public, if the guilty party be suffered to escape, because the evidence may have been altered or suppressed.

'GEO. H. RICKARDS, *Foreman.*'

At the Sessions held in the *Central Criminal Court*, on the 16th June, the foregoing presentment, made by the Middlesex Grand Jury on the 18th of May last, having been read, it was

"*Resolved*,—That this Grand Jury fully concurs in such presentment, and that this resolution be communicated to the Court, and a copy thereof be forwarded by the Foreman to the Secretary of State for the Home Department, and to the members for the county."

(Signed) THOS. NELSON, *Foreman.*

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

HAVING in our last number printed the various "Topics of Inquiry," issued by the Committee of Management of this Association, we are desirous thus early of calling the attention of our readers (whether members of the association or not) to the important subjects they involve.

The Committee, we believe, are desirous of ascertaining the views and feelings of the whole profession, and in order to give those views and feelings effective power, it is evident that the Committee should be furnished with facts and illustrations, not only sound and valuable, but as numerous and comprehensive as possible. We are sure that communications are invited, not only in support of, but in opposition to, the views which are shadowed forth in the Topics, wherever it may appear that those views are unsound or objectionable to any of the profession. The power of the association for good must depend upon its embodying, as far as possible, the result of the varied thought and experience of our scattered and far too disunited body.

Should any of our readers be too much engaged to send a formal communication to the Committee, they may select a few points and send us their hints, which we will endeavour to follow up for the general good.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

THE FIFTH ANNUAL REPORT OF THE COUNCIL.

It is with much satisfaction that the Council are able, in presenting their fifth annual Report to the Society, again to congratulate its members upon the increased support which it is has received, upon the proofs afforded in many ways of the hold taken by it upon public esteem.

Whether they consider the steady growth of the pecuniary resources of the society, or the larger attendance at its public meetings, or the still more important circumstance of the increasing numbers who take part in its ordinary discussions, and contribute their valuable assistance to mature the suggestions originally elaborated by its committees,—in whichever of these directions they turn their eyes, your council see much from which to draw encouragement for the present, and hopeful auguries for the future. Your council have declared in former reports, and would now repeat, that they attach far more importance to the value than to the multiplicity of the suggestions which proceed from the Society, and if your committees appeared to them to need any caution, they would rather press upon them the pithy advice given to the literary student in the old maxim, which urges him to read *multum non multa*, than seek to draw from their labours results more numerous, but less perfect.

Your council, then, are far from thinking that the Society has any reason to be dissatisfied with the activity of its several committees,—even in point of quantity, the result of their labours is not inconsiderable, while of the value of the reports which have been presented to the Society since its last annual meeting, there can be but one opinion.

In proof of this assertion, your council would more particularly refer to the two-fold reports of the committee on the Law of Real Property, upon the Law of Fixtures, and upon that question, which, under the name of Tenant Right, has recently excited so much interest,—the question of the claim of agricultural tenants to compensation for unexhausted outlay upon the soil. These reports have been admitted, not only by the legal profession, but by the agricultural community, to contain the clearest, fullest, and most impartial exposition of the subjects treated of in them which had appeared, and your council believe that they have had a material influence, not only on the deliberations of the committee of the House of Commons appointed in the present session on agricultural customs, but in bringing about a right understanding among all parties interested in the subject.

Not less important, though perhaps less attractive to the general public, are the reports and papers which have proceeded from the equity committee, upon that fertile subject of complaint,—the system of procedure in the

Masters' Offices of the Court of Chancery. These reports have demonstrated that the system now pursued must be entirely changed, and the proposals have met with the cordial sympathy of the public.

In the Committee on Common Law, the consideration of a proposal simplifying the first steps of actions for debt, in cases where the sums sought to be recovered are too large to be sued for in the County Courts, has been made the subject of a report, which is still under discussion in the Society; while another report on the important question of the proposal for introducing into the Superior Courts the practice already adopted in the County Courts, of admitting the parties to the record to give evidence in their own favour, and making them liable to examination at the instance of their opponent, is ready to be presented.

Lastly, a question of the highest social importance,—the amendment of the law of divorce for adultery, with respect to the mode by which the injured party can obtain the power of contracting a second marriage,—has occupied much of the attention as well of the Committee on Ecclesiastical Law as of the Society at large. The report on this subject is now also ready.

The council feel that, while they can point to such proofs of activity, they are justified in congratulating the Society upon the continued energy of its members.

If the Society did nothing more than keep alive the desire for the amendment of the law, by serving as a rallying point round which law reformers might gather, and derive encouragement from meeting each other, it would do much. But it does much more. It not only strengthens the desire, but it furnishes weapons for the fight. The plans of reform which it has advocated will be found to enter into various schemes, brought forward, apparently, without connexion with the Society. For example, a petition has recently been presented to the Lord Chancellor, in the name of a large body of influential solicitors, earnestly praying for the introduction of extensive alterations in many points of the practice of the Court of Chancery, and especially that of the Master's offices. Let these reforms be compared with those recommended in the different reports of the Equity Committee of this Society, and the similarity of the plans proposed will be, in many respects, apparent.

Again: a bill, now on the point of being sent to the House of Lords from the other house, was introduced early in the present session, by the government, for facilitating the winding-up of the affairs of joint-stock companies. One of its leading provisions is to give to the Masters of the Court of Chancery, in all matters connected with the varied interests involved in such concerns, the power to make orders to be enforced as orders of the Court, subject only to appeal: in fact, to convert the Master from an officer, whose duty it is only to give information to the Court upon points

specifically referred to him, into a judge, whose decisions are binding till appealed from. If the reports of the Equity Committee, already alluded to, are examined, the same proposal, only applied to a more extended range of cases, will be found to occupy a prominent place among the reforms suggested by them.

Other instances might be adduced of the adoption, in influential quarters, of plans advocated in the reports of the Society: but these may suffice to show that its efforts are not thrown away, even when no direct result may appear immediately to proceed from them.

This indirect influence the council in part attribute to the zealous co-operation of the "Law Review" which, in addition to the regular notice of the proceedings of the Society, has republished many of its most valuable reports, thus procuring them circulation in quarters where otherwise they might not obtain access.

The interesting lectures in which Mr. Stewart has so ably expounded the defects of our present system of conveying real property, and pointed out the appropriate remedy, have been another valuable auxiliary, during the past year, in diffusing a knowledge of the measures of law reform advocated by this Society, for which the council wish to express, in the name of the Society, their grateful thanks.

Nor can your council refrain from reminding the Society of the inestimable advantages derived from the brilliant and elaborate speech of their noble president, who, on the 12th of May last, brought the whole subject of the Amendment of the Law before the House of Lords, and enforced, in the most striking manner, many of the proposals made by the committees of this Society.

But if there is reason for the Society to congratulate itself on its past success, the council would use that success as a powerful argument with its members not to slacken in their exertions. If something has been done, much remains to do. The funds of the Society, though showing a steady increase, are still far from sufficient for achieving all that ought to be done, in order effectually to promote the objects it has in view. For instance, the formation of a good library of books of reference on legal and legislative subjects, is a matter which the council have much at heart, but have not at present the means of effecting.

Urgently, therefore, would they press upon those members of the Society who may not be able otherwise to assist in its work, at least, if possible, to aid it by procuring the accession of new members.

Still more, however, are they anxious to urge upon all those members of the Society whose avocations permit them, to contribute, at least, in some one point, to the Amendment of the Law, by bringing forward a subject for consideration in its committees.

No work of any real value can be accomplished without great labour; and your council are anxious to impress on the Society their opinion that its very existence depends on the care with which its reports are prepared, and

their being directed to those defects in the law which admit of a remedy.

Your council again surrender the trust committed to them into your hands, desirous, should you please to re-elect them, of endeavouring to discharge the important duties which devolved on them, but willing, also, to see them placed, should you wish it, in other hands.

12, Regent Street, June 21, 1848.

REMUNERATION TO SOLICITORS FOR CONVEYANCING BUSINESS.

WE deem it useful to collect from all available sources, and to record in our pages, suggestions and remarks relating to professional remuneration, and the best mode of adjusting the amount. We therefore extract from the Third Lecture of Mr. James Stewart, on the means of facilitating the Transfer of Land, the following statements and observations, in regard to a *General Register of Deeds*, under the head of

Mode of Remuneration.

‘The first, and perhaps the most important, alteration which should accompany it, is a change in the mode of remuneration to the legal profession. You know, gentlemen, that the usual mode of payment for preparing deeds and for perusing abstracts is by the length of the instrument drawn or perused. I think this is very generally admitted to be a bad mode of payment. The only question is as to the substitute for remuneration by length. For what is this mode of remuneration? Both the barrister and solicitor are paid, not for the labour, the skill, or the talent which he has expended, but simply by the length of the instrument prepared by him, or employed by him in the course of his professional duties. Skill and talent obviously cannot be measured by length, neither can labour be so measured, for it is often more easy to compose a long instrument than a short one. The degree of care and labour mainly depends on the habits and conscience of the draftsman; but the only point looked at, so far as remuneration is concerned, is the length. Skill and labour, therefore, are not insured, but length is. This, it must be admitted, is bad in itself; as a system should be adopted which, so far as it is possible, will insure what is absolutely necessary, and not what may very well be dispensed with. Some documents must, indeed, be long; many may well be short; but all should be the fruit of labour and skill. So, also, were I devising a new system, I would not choose a plan which is palpably open to be abused by the direct tendency in human nature to study its own interest rather than the strict rule of conscience.

‘It is obvious, then, that the present system of remuneration does not insure the proper requisites for the work, and it places human nature in a constant state of temptation. But is not this stating its effect rather too mildly?

Does it not often give cause for the most odious accusations and suspicions? I only wish to glance at this, but it would be easy to go into detail; and although I believe that the great body of each branch of the profession is free from blame to any great extent, yet it is not right that an honourable profession should be open even to the suspicion of such motives for their every day proceedings. But these are by no means my only reasons for saying that the present system of remuneration by length is a bad one. It is of far more importance than in the first instance it appears. If the additional gain from the additional length of the draft simply went into the pocket of the barrister or the solicitor, and that were all, that, perhaps, would not do much harm; but it may be safely said that every line of every deed is multiplied by twenty in the subsequent proceedings of the cause, or after dealing with the property.

‘And is this system, so injurious to the client, always fairly remunerative to the profession: I think not. There is much business which, though necessarily paid by this standard, is very inadequately paid. You will find plenty of evidence to this effect from solicitors. It seems, then, that this system is open to almost every objection of which a system is capable. It does not insure adequate skill and labour; it is liable to be greatly abused; and, lastly, it is not adequately remunerative. It rewards what should not be rewarded, and it leaves too often the best services wholly unpaid. With all these defects, what shall we substitute in its stead? I admit that this is a question not easy of solution. Still, if I find that our present practice is admitted by all to be a bad one, and to work ill both for the public and the profession itself, and I find another mode of payment prevails not only in almost all other civilised countries, but also in Scotland to a great extent, which appears to give satisfaction to all parties, I am induced to think that it would be well if that mode of remuneration were to receive a trial in this country. I mean a remuneration chiefly founded on the value of the property dealt with. If you were to inform a foreign advocate or solicitor that our mode of remuneration was by length he would hardly believe you, so objectionable would it appear to him; and, certainly, if it were meant to obstruct all small dealings in land, the plan is very successfully contrived for that purpose; for it is obvious that, if a shorter deed or less perfect abstract is used when a small piece of land is conveyed than when a large piece is, either the long abstract or deed are useless in the latter case, or the purchaser of a small piece is deprived of some protection which the purchaser of the larger piece obtains. I apprehend, therefore, that if you wish to encourage the ready transfer of land, you should alter this rule as soon as possible; and, moreover, I believe you would have the very general concurrence of the profession in this alteration. I have conversed with many eminent solicitors practising in London and the country, and they have almost to a man concurred with me that it would be a highly desirable change;

and it has, indeed, been partially adopted by some respectable offices in the country, although for any general or extensive change I apprehend legislative sanction would be necessary. And here I may mention that a friend of mine, an eminent solicitor, informed me that on the marriage of the eldest son of a nobleman, his client, it was necessary to settle the lands, which lay both in England and Scotland; that he did his duty, and the Scotch solicitor did his; that he sent in his bill, which was on the principle of payment by length, and the Scotch solicitor sent in his afterwards, which was on the principle of payment *ad valorem*; and that my friend was much concerned to find that the marriage settlement of the Scotch property, although not so large as the English property, was much higher in amount than his, although the settlement was much shorter, and ever since that, my friend has been a strong advocate for an *ad valorem* payment.

"And I will frankly tell you that it is on no small policy of clipping professional bills that I have undertaken to bring these matters before you. Economy in these transactions should be fairly attended to, but this is far from being the principal point. Certainly, in point of time, the safety and simplicity of the title are far more important. The expense, if these be secured, does not deter persons from buying land. Take, for instance, Belgium, where the buying and selling land is the passion of the people; where it is said that the whole land in the country changes hands once in fifteen years, which is, of course, not true as to certain lands, but is made up, it is said, by even a more frequent change of other lands. Admit this to be an exaggeration, but there can be no doubt that the traffic in land is enormous. Well, in this country the expenses are very high indeed, they usually range at 10 per cent., and they must come to 7½ per cent., stamp duty and all included; but, then, this is a certain expense, it is calculated by the person laying out his money, and it does not deter him from investing it in land. Then, again, in Prussia, the usual expense is much less, being usually only 1 per cent., and yet there is not nearly so much traffic in land as in Belgium, so that the expense, provided it be an ascertained expense, does not alone deter persons from dealing in land. I believe, indeed, that the large sums that are now paid would be willingly paid, if the parties could be spared the anxiety, the ruinous delay, lasting sometimes for years, which often cause the misery, and even the death, of the parties. This is the great cause of grievance, and not the expenses, although it is right and fair that they should also be looked to, and rendered more moderate and better proportioned to the property."

We shall be glad to receive the opinions of practitioners of experience on this suggestion, and trust they will consider it, with reference to instances within their personal knowledge.

DISQUALIFICATION OF PRACTITIONERS TO ACT AS JUSTICES OF THE PEACE.

MEETING OF FACULTY OF PROCURATORS AT GLASGOW.

On Thursday, the 8th June, a meeting of the Faculty of Procurators in Glasgow, was held in their Library Room, in consequence of the following requisition addressed to the Dean, and numerous signed by members of Faculty:—

"Being convinced that the statutory disqualification of all Procurators before the Inferior Courts of Scotland, and of their partners, to act as Justices of the Peace, is unjust in principle, inexpedient on public grounds, and invidious to the profession, we request you will call a meeting of the Faculty, on an early day, to consider as to the propriety of taking steps to procure an immediate repeal of the enactment."

Alexander Morrison, Esq., the Dean of Faculty, occupied the chair.

The requisition was read by Mr. Jameson, the Clerk, when, after some remarks, the following resolutions were put and agreed to:—

"1. That in the opinion of this Faculty, the provision in 6 Geo. 4, c. 48, whereby Procurators practising in any Inferior Court in Scotland, or the partners of such Procurators, are entirely disqualified from acting as Justices of the Peace, is invidious, unjust to the profession, and inexpedient for the public.

"2. That this Faculty do not approve of any Procurator who is practising before a Justice of the Peace Court, or his partner, being allowed to sit as a judge in the same Court in which he or his partner is a practitioner, and such disqualification ought to continue; but no reason exists for disqualifying Procurators who practise in Sheriff or other Inferior Courts, from acting as Justices of the Peace.

"3. That it is proper that steps be now taken to procure a repeal of the disqualification to the extent referred to, and, for this purpose, the Dean be respectfully requested to put himself in communication with the Secretary of State for the Home Department, with the Lord Advocate, and with any party whose influence or interest may be of value.

"4. That the Dean be also authorised, if necessary, to present petitions, in name of the Faculty, to both Houses of Parliament, embodying the substance of these resolutions, and praying such repeal of the enactment."

The Dean suggested the propriety of sending copies of them to all the Scotch members of Parliament, the Lord Lieutenants of counties, and the heads of all the law bodies in Scotland, requesting their co-operation in obtaining the removal of this clause. They should also send it to the Magistrates and Council of Glasgow, to the Merchants' House and Trades' House, and to the Lord Provost, with a request that he would lend his aid to a bill in Parliament for the repeal of the clause.

Mr. Lamond said, they should also correspond with the Keeper of the Signet; for the Writers of the Signet, of whom there were at least 100 in the Commission of the Peace, were, to a certain extent, affected by the Small Debt Act. What would Mr. Richard M'Kenzie, of Dolphinton, the Keeper, think, if he was not allowed to sign a warrant in the Upper Ward of Lanarkshire?

The Dean's suggestions were unanimously agreed to, and the meeting separated.

THE INCORPORATED LAW SOCIETY.

ANNUAL REPORT.

THE Report made by the Council of this Society, at the General Meeting, on the 30th May, has just been printed, and appears to be more full than on former occasions. We are glad to see these details, for it appears that the profession is not aware of the pains taken and the exertions used in their behalf.

The Report is prefaced with a statement of the origin, progress, and various useful objects of the Society, which we shall here set forth for the information of those who are not yet enrolled amongst its members.

"This Society was formed in the year 1823, for the purpose of providing a *Hall* for the daily resort of the Profession,—a *Library* and *Lecture-Room*.—*Fire-Proof Rooms* for depositing Deeds and Papers,—an *Office* for concentrating Information as to the Proceedings of the different Courts and other matters connected with the Profession, theretofore dispersed in, and to be collected from, various offices and places,—*Rooms* for Meetings of Arbitrators, and other professional purposes,—a *Club Room* for Refreshments,—and for such other objects and purposes as, in the progress of the Society, might be considered desirable for the convenience and advantage of the profession.

"It is a remarkable fact, that whilst the Barristers had their Halls and Libraries, the Writers to the Signet in Scotland and the Attorneys in Dublin their Libraries and Lecture Rooms; and whilst the Commercial and Trading Classes of the community also possessed places of general resort for more conveniently transacting their business;—the Attorneys in England, with such examples before them, should remain stationary, and be without an Establishment calculated to afford such of those advantages as were suitable to their own Profession.

"To supply those important *desiderata*, the promoters issued a Prospectus to their brethren, and having obtained a considerable number of Subscribers, a General Meeting was held on the 2nd of June, 1825, when the Plan was approved, and a Committee of Management appointed for carrying it into effect. It was deemed necessary to raise 50,000*l.* in shares of

25*l.* each, with power to increase the capital to 75,000*l.*

"In 1827, a large proportion of the Fund having been collected, and a Deed of Settlement signed by the Members, the Committee obtained an eligible site, contiguous to the Inns of Court and Law Offices, and the present building was erected thereon.

"A Royal Charter of Incorporation was granted on the 22nd December, 1831, and the Institution was opened for the use of the Members on the 4th July, 1832.

"In the progress of the several useful purposes contemplated by the Deed of Settlement and Original Charter, the Committee of Management experienced considerable disadvantages occasioned by the Joint-Stock character of their undertaking.

"To obviate this objection, the Committee, with the sanction of repeated meetings of the then proprietary body, were authorised to apply for a new Charter, of a general and collegiate nature, and to surrender the existing Charter; in the prosecution of which objects, the Committee were gratified by a liberal renunciation on the part of a large majority of the proprietors of their individual and transferrable shares in the property and effects of the Institution.

"A new Charter was accordingly granted by her present Majesty, on the 26th day of February, 1845, by the tenor of which, the constitution of the Society has been so modified that the individual rights and responsibilities of the Members, as proprietors of the former Institution, have been merged in the Corporation, and the whole capital and possessions, rents and income, are rendered applicable to the general purposes of the Society 'in promoting professional improvement, and facilitating the acquisition of legal knowledge.'

"By the 6 & 7 Vict. c. 73, the Society is appointed Registrar of Attorneys and Solicitors, and the Commissioners of Stamps are directed not to grant any certificate until the Registrar has certified that the person applying is entitled thereto. Under this Act, an alphabetical book is kept by the Society of all Attorneys and Solicitors on the Rolls of the several Courts of Law and Equity. An annual book is also kept of all applications for the Registrar's Certificate, with the name of the Court in which each attorney was admitted, and the date of admission; which book is open for inspection without fee.

"The Judges of the Common Law Courts, under the general rules and orders of Court, annually appoint Sixteen Members of the Council, with the Masters of the several Courts of Law, as Examiners of all persons applying to be admitted on the Roll of Attorneys; and the Master of the Rolls also appoints annually Twelve Members of the Council for the like purpose in regard to Solicitors.

"The Society has for upwards of 16 years pursued a course of progressive usefulness, productive of essential and increasing advantage to the profession, resulting from the exertions of a recognised body of Practitioners anxious to co-operate in promoting every mea-

sure calculated to afford facilities for professional practice, to remedy abuses, and to sustain the just claim of their branch of the profession to the respect of the community at large. In furtherance of these desirable objects, the Council and their different committees hold regular meetings for conducting the general business of the Society. They cause lists of persons applying to be admitted and re-admitted attorneys and solicitors with applications for taking out or renewing certificates to be printed and distributed among the Members and in the several Law Offices, and transmitted to the Provincial Law Societies, in order that improper persons may be opposed. Where there is sufficient ground for opposition, the Council undertake it on behalf of the Society, and they also apply to the Courts to have persons struck off the Rolls who misconduct themselves as attorneys.

“They cause to be printed and distributed amongst the Members all new Rules of Court, and other important professional information.

“On their opinion being required as to any doubtful or disputed professional usage, they carefully consider the matter, and register their decisions in a book kept for that purpose, which is accessible to the Members of the Society.

“They examine all Bills brought into Parliament which relate to the Law, and state in the proper quarter such objections as occur to them, and also suggest such additions and alterations as appear to them necessary for improving and perfecting the proposed enactments; and in these and the like instances they take all such measures as seem best calculated to promote the general interests and respectability of the profession.

“The Society already comprises a great proportion of the most respectable practitioners in town and country; and the Council are desirous of calling the attention of their Professional Brethren to the advantages afforded by the establishment to the Members of the Society, as well as to the Profession generally.

“Any gentleman duly qualified according to the Charter may be admitted a Member, on being proposed by two Members of the Society, and approved by the Council, and paying, if a *Town Member*, an Admission Fee of 15*l.*, and an Annual Subscription of 2*l.*, or if a *Country Member*, 10*l.* on Admission, and 1*l.* annually.*

“Every Member immediately on his admission becomes entitled to the benefits resulting from the Institution, which comprises the following departments :—

“*The Hall,*

open daily, from 9 o'clock in the morning till 10 at night, furnished with suitable accommodations for transacting business, with the Votes and Proceedings of both Houses of Parliament, the London Gazette, Morning and

Evening Newspapers, Reviews, and other useful periodical publications.

“Here also Members of the Profession are enabled to meet one another by appointment from distant parts of the town or country, for all purposes of business, and to employ the intervals of engagements profitably as well as agreeably.

“*An Ante-Room and Registry Office,* for the use of Members and their Clerks, open daily from 9 o'clock in the morning until 8 at night.

“In the Registry Office are kept an account of Appeals in the House of Lords, the general and daily Cause Papers, Seal Papers, List of Petitions in Causes in the Courts of Equity, and in Lunacy and Bankruptcy, the Sittings Papers, Peremptory Papers, Special Papers, and Papers of New Trials in the Courts of Law; with a statement of the business intended to be proceeded in on the following day, as far as practicable; and the earliest information of the arrangements made by the Judges for the dispatch of business.

“Boxes with locks are provided in the Ante-room for Members, in which they may deposit their Papers, thus saving the trouble and expense of carrying them to and from the Courts and offices. Books are also kept for entering particulars of property to be sold or purchased; of money to be lent, or wanted to be borrowed on mortgage or otherwise; of applications for partners, and for articulated, managing, and other clerks.

“*A Suite of Rooms,*

for meetings of arbitrators, or any other professional matter.

“Experience has proved this part of the Institution to be a great convenience to the Profession. In these rooms, also, business which cannot be conveniently done in the Hall may be transacted and appointments made with clients and others.

“*Fire-proof Rooms and Closets,*

for the deposit of Deeds, &c. in separate Boxes, or to let to Members of the Profession, either for temporary or permanent purposes; each renter having a private key of his own room or closet to which no other member has access; while all the rooms are secured by a principal outer door, of which the Secretary alone has the key.

“*A Library,*

which is open daily, from 9 o'clock in the morning until 10 o'clock at night, except on Saturdays, when it is closed at 4. It comprises a large collection of Books relating to the Law, and to those branches of Science or Literature which may be considered as more particularly connected with the Profession; such as Reports of Proceedings in the several Courts of Law and Equity, Local and Private Acts, Journals, and other Proceedings of Parliament; County, Local, and general Histories; with Heraldic Publications, and other matters of Antiquarian Research, &c. Upwards of 8,000 Volumes have been already collected, including

* A proportion of the Annual Subscription is required according to the time of admission.

the Statutes at Large, most of the Text-books, a complete set of all the Reports both in Law and Equity, a great body of County History and of Typographical and Antiquarian Works, all the Volumes printed by the Commissioners on the Public Records of the Kingdom, and the London Gazette from its commencement.

"In case any scarce Book in the Library should be wanted for production in any of the Courts of London or Westminster, the Librarian, or a Messenger, will attend with it, under the authority of the President, Vice-President, or two Members of the Council.

"To enable Clerks the better to qualify themselves for examination previously to admission, the articulated Clerks of Members are admitted to the Library on payment of an Annual Subscription of 1*l*.

"The advantages of such a library may be appreciated on considering the great expense attending the purchase of such books as are absolutely necessary to an attorney or solicitor for constant use; whilst the possession of a comprehensive Law Library, particularly if it include Parliamentary Publications, County Histories, Antiquities, &c., is scarcely within the compass of any individual, not only on account of the expense, but also of the want of room for it.

" Lectures

on the different branches of the Law are regularly delivered in the Hall, and are numerously attended by the articulated clerks of Members, and other students, and Members themselves have found them particularly useful, in consequence of the various and extensive alterations which have already taken place, and are still in progress, as well in principle as in practice, both in Law and Equity.

"The utility of Law Lectures has been recently recognized by the Inns of Court, where students for the Bar may now possess advantages similar to those which were derived from the Ancient Readings in those Societies.

"The Members of the Society are entitled to attend these Lectures *gratis*; while to others the expense is very moderate, being 1*l*. for each set of Lectures, or 2*l*. for the whole course, to persons under articles of clerkship to Members, or persons who have served such clerkship, while they continue clerks to Members, and are not practising on their own account. The articulated clerks of gentlemen *not* Members pay 1*l*. 10*s*. for each set, or 3*l*. for the whole; and *other students* are admitted on paying 2*l*. for each set of Lectures, or 4*l*. for the whole course. The Lectures are delivered at 8 o'clock in the evening, so as to interfere as little as possible with the business of the day.

" Club-room.

"There is a Club, consisting only of Members of the Society who have paid Entrance Fees and Annual Subscriptions; and any other Members of the Society may become Members on being proposed, balloted for, and elected, and on payment of the Entrance Fee of Five

Guineas, and an Annual Subscription of Five Guineas for Town Members, and Three Guineas for Country Members."

"The Members of the Club, besides other advantages, are supplied with dinners and refreshments, on the plan of the University, Athenæum, United Service, and similar Clubs.

"June, 1848."

The Annual Report shall follow in an early number.

LETTERS OF

MR. JUSTICE BLACKSTONE.

REFERRING to the letter of the learned Commentator which we were enabled to submit to our readers at p. 203, *ante*, we are glad to present two other epistles, dated from All Souls' College, Oxford, which, though not so professionally interesting as the previous one, will be found curious at least in two particulars, viz., in the animadversions of the celebrated John Wesley on the collegians of his day, and Blackstone's own adventure with highwaymen on the road to London, in 1751.

DEAR SIR.—I should long ago have discharged ye Debt that is due both to You and Good Manners, had I not heard that Mrs. Matthews had it in charge to acquaint you and my Cousin, that my Uncle and Aunt B * * * desire to be excused from waiting on you this Summer. I am now able to inform you, that they propose to set out from Oxon to-morrow for Worting; so that next week they will be, I presume, at Liberty to wait upon my Cousin, unless she makes it her Choice to entertain her Bror. that week at Sparsholt. However that be, if I could know whether ye young Gentlemen does for certain come home, I would steal one night, if possible, from Oxford to ask him how he does. The whole Family at Xt. church is well, nor have we been a bit ye less agreeably entertained there, for ye want of ye extraordinary Civility of a Gentleman who perhaps has not always common. It wd, I am confident, have added much to our Satisfaction to have had Miss Richmond among us, to whom and yourself my revd Br and I must desire our compliments. Henry is at Hall, and Charles is soon going into Hampshire to take care of a Church for some months, whch is about 1 mile from Hall, 4 from Worting, and 3 from Mary-down. We were last Friday entertained at St. Mary's by a curious Sermon from Wesley ye Methodist. Among other equally modest Particulars, he informed us 1st That there was not one Christian among all ye Heads of Houses: 2ndly that Pride, Gluttony, Avarice, Luxury,

^b If admitted after June, the Subscription for the remainder of the year is Three Guineas for Town, and Two Guineas for Country Members.

Sensuality, and Drunkenness were ye general Characteristicks of all Fellows of Colleges, who were useless to a proverbial Uselessness. Lastly, yt ye younger Part of ye University were a Generation of Triflers, all of them perjured, and not one of them of any Religion at all. His Notes were demanded by ye Vice-Chancellor, but on mature Deliberation it has been thought proper to punish him by a mortifying Neglect. I have nothing further to add but yt I recd my Parcel safe, and am particularly obliged to return you my thanks for that and all other instances of your Friendship and Kindness by me recd. Your Letter (with additions) I sent to your Son; wch as it seemed agreeable both to you and him, could not be otherwise to, Sir,

Your most obliged humble Servt,
WILL. BLACKSTONE.
28 Aug. 1744
A. S. Oxon.

To Seymour Richmond Esq.
at Sparsholt near Wantage in Berks
P post.

DEAR SIR,—In answer to Your Enquiries concerning myself & Bror, I am to inform You that I propose going to London on ye 16th of January, or thereabouts, for I cannot quite fix ye Time. My Br. will not be able to stir from College this Xtnas, as he will then have just entered on ye Office of Dean, wch requires much Psonal Attendance. My Br. & Self join in all Compliments both of ye Season & otherwise to Yourself & Miss Richmond. I am,

Sir
Your most obliged
humble Sert.

A. S. C. W BLACKSTONE.
18 Dec. 1751.

P. S. Your Apprehensions of Robbers may not be ill founded; as I had ye Honour to meet with a brace of High Waymen in my Journey from London who eased me of my Watch & about 50 shillings in Money.

If convenient & agreeable I can return You the Money by a Draught on Mr. Child ye Banker: wch may be of Service to your Brother in his Remittances. If you chuse this Method, pray let me know to whom & how you wd have ye Bill made payable; & that before Monday next, when I shall make up my Accounts with ye College.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Brown v. Lee. June 8, 1848.

TIME TO ANSWER.—18TH ORDER OF MAY, 1845.

Under the 18th Order of May, 1845, a defendant applying for further time to answer must show due diligence and sufficient cause for the application, either by affidavit, or from the nature of the case, or the admissions of the plaintiff.

SUGGESTED IMPROVEMENTS IN THE LAW OF COPYHOLDS.

LAND HELD UNDER THE CHURCH.

I HAVE referred to the 6 Geo. 4, c. 47, authorizing the See of Canterbury to grant licenses to demise copyhold and to fix the fines, and find that section 2 contains a confirmation of licenses previously granted and of leases made in pursuance thereof.

By the next section the Archbishop is empowered, with the consent of the copyhold tenants, to fix the annual value of copyholds already demised under licences for building purposes; and by section 4, it is enacted, that copyhold tenants shall not be liable to pay fines upon admission, otherwise than according to the sum so fixed.

Fearing that some time may elapse before a compulsory act passes to effect so excellent an object as the enfranchisement of copyholds, I feel assured that the property of the Church, as well as of other bodies, would be vastly improved by a legislative enactment similar to that above referred to. At present both lord and tenant incalculably suffer.

PAYMENT OF FINES.

The stewards adopt a novel and unjustifiable principle of refusing to admit until the fine is actually paid, which is illegal. There is no remedy, however, but a mandamus.

I think the principle of the Lambeth and Croydon Act, 6 Geo. 4, c. 47, might be carried out, and be extended to all ecclesiastical owners, and if possible to all lords of manors, limiting them as by that act to fines according to the ground rent, except as is mentioned in sect. 4.

L.

NOTES OF THE WEEK.

NEW LAW BUILDINGS.

A sale took place on Monday last of the materials of the two houses on the north side of the Law Institution, which are about to be immediately pulled down for the purpose of enlarging the building. We understand that the library will be extended, and a new council room provided, with offices, &c., rendered necessary by the increase of members and a large accession of important business.

THIS was a motion to discharge an order of Sir G. ROSE, made the 1st of June, giving a month's further time to answer to one of the defendants, Charles Lee. The application for further time was sustained by an affidavit made by the solicitor of Charles Lee, stating that he had not in his possession the accounts required by the answer, nor the means of furnishing them, and that he, as the solicitor of Charles Lee, had made application for the accounts, and was unable to obtain them, but that he believed he should be able to do so within a

month from the 29th of May, the date of the affidavit.

Mr. Turner and Mr. Elderton, for the motion, contended that the affidavit did not furnish sufficient proof of due diligence on the part of Charles Lee, to satisfy the exigency of the 18th Order of May, 1845, which authorized the Master to allow further time for answering, only, if "a defendant using due diligence was unable to put in his answer within the times allowed by order 16, and on sufficient cause being shown." They stated that a habit had grown up in the Masters' Offices of always granting further time as of course upon a first application, a practice which would destroy the object of the new orders; and that the Master in the present instance had not proceeded upon the affidavit, but upon this custom.

Mr. Roupell and Mr. Dickinson, in support of the order, contended, that it was not necessary for the Master to require any affidavit in order to grant time for answering; that this affidavit was sufficient; and that before the Master the plaintiffs had acquiesced in the extension of time granted as reasonable. There was some uncertainty in the statement of what did take place before the Master.

Lord Langdale said, he was sorry this application had been made, and thought it would be mischievous were he to send the case back to the Master. He considered such a practice as was stated to have grown up as very erroneous, but he was much afraid that a notion had grown up, that time was to be had for asking, and if so, it would be hard to punish the present defendant for acting upon it. The order was clear that due diligence must be shown. It did not follow that an affidavit was necessary. The nature of the case might be such as to show that further time for answering was required; or there might be allegations on the one side and assent on the other, which would be sufficient. In this case an affidavit was required, but he was not sure that more did not pass before the Master, besides the statements in the affidavit, on which sufficient cause might have been shown. He was anxious to prevent the growth of such a practice as seemed to him to have grown up in the Masters' offices, and trusted that this expression of his opinion would check it. But on the whole he must refuse the present application, though without costs.

Vice-Chancellor Knight Bruce.

Snowball v. Dixon. Thursday, Jan. 27, 1848.

DISCHARGE FOR CONTEMPT.—PRACTICE.

A party in contempt for non-payment of money, who might have applied for discharge to the Insolvent Debtors' Court, applied to this Court for such purpose, but the application was ordered to stand over without prejudice.

THIS was a motion on behalf of a defendant, who was in custody for non-payment of 97*l.* 7*s.* 6*d.*, nothing remained to be done in the

cause, and a sum of money ordered to be paid to the defendant, Jane Dixon, and another person, or one of them, had just been paid to that other person. Jane Dixon had been five years in gaol, but for the last 18 months for non-payment of the above sum only.

Mr. Russell and Mr. Taylor supported the motion, which was that she be discharged out of the custody of the sheriff of the county of the town of Newcastle-upon-Tyne, as to all her contempt in the cause, and cited *Bennett v. Chudleigh*, 2 Y. & C., C. C. 164.

Mr. J. H. Humphreys opposed the motion, on the ground that the defendant might at any time during the last 18 months have made an application to a Court for relief of insolvent debtors.

His Honour thought, that as she clearly might have taken that course as to the 97*l.* 7*s.* 6*d.*, and had not done so, he ought not to interfere as asked. A certain sum in which the lady was alleged to have a possible interest, was ordered to be paid to her and another person, or one of them, and that sum was paid less than a week ago to that other person. His Honour, under such circumstances, would order the motion to stand over, with liberty to apply, without prejudice to any application by either party, to the Insolvent Debtors' Court, or otherwise.

Queen's Bench.

(Before the Four Judges.)

The Queen v. Kensington. Trinity Term, 1848.

SALE OF BEER ACT. — CERTIFICATE. —
OVERSEER.

The overseer of a parish has a discretion whether to grant or refuse a certificate under the 3 & 4 Vict. c. 61, s. 2, (the Sale of Beer Act,) that the applicant for a license "is the real resident holder and occupier of the house" for which the license is sought to be obtained.

THIS was a rule to arrest the judgment on a verdict upon a return to a writ of *mandamus*. The defendant was the overseer of the parish of St. Andrew Hubbard, in the city of London, and the *mandamus* had been obtained in order to have a decision on the extent of the powers of an overseer, under the provisions of the 3 & 4 Vict. c. 61. That act was passed to regulate the selling of beer in England by retail, and by the first section it was enacted that a license to sell beer by retail was not to be granted to any but the "real resident holder and occupier of the dwelling house in which he shall apply to be licensed; nor shall any such license be granted, in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum the rate for the relief of the poor, &c., on a rent or annual value of 15*l.* a year." Provisions were made to carry this enactment into effect, and by the second section it was declared, "that every person who shall apply to be licensed to retail beer or cider shall produce to the proper officer

of excise a certificate in writing from an overseer of the parish in which he shall reside, certifying that such applicant is the real resident holder and occupier of the said house, and also certifying the true rent or annual value at which such house is rated." An application had been made to the defendant to grant the required certificate. He refused to do so, and the *mandamus* was then applied for and obtained. The defendant made a return, which stated in substance, that no evidence was furnished to him, neither had he any means of ascertaining, that Hamper was the real resident holder and occupier of the house; and that a person who had formerly been the occupier of the house still kept his name over the door of it, and occupied a room in it. Issue was taken on this return, and the only issue raised was, whether the defendant well knew and was furnished with sufficient evidence by the said Thomas Hamper that he the said Thomas Hamper was the real resident occupier of the house in the writ mentioned. On the trial of this issue before Lord Denman, in 1845, the prosecutor called several witnesses who proved the communication by them to the defendant of the several facts required by the statute previous to the signing of the certificate. One of the witnesses also stated that he offered the defendant any further information that the defendant might require, but that the latter answered that he was not objecting on that account, but on the ground of principle, as he insisted that he was not bound in law to grant a certificate on the mere requisition of a party and on proof of certain facts, but might refuse it at his discretion. On cross-examination of these witnesses it appeared that the prosecutor was to open the house for the purpose of selling the ale of a particular firm; that the person from whom he took the house was the landlord, but had been the occupier, and had claimed as such to be on the list of voters for the city of London, and it was therefore contended for the defendant, that the occupation of the prosecutor was colourable, so that even assuming that the defendant had only to fulfil a ministerial duty and not to exercise a discretion, evidence did not show the existence of those facts out of which the duty would arise. The judge left it to the jury to say whether Hamper was the real holder and occupier, and whether the defendant knew the facts. The jury found both matters in the affirmative and returned a verdict for the Crown. A rule was afterwards obtained to arrest the judgment, on the ground that the overseer had a discretionary power in this matter, and on several grounds, which it was contended, proved that the discretion had been rightly and fairly exercised. The arguments by Mr. Cockburn and Mr. James for the prosecution, and Mr. Whitehurst and Mr. J. Henderson for the defence, were directed to be confined to the question of discretion alone. The Court had taken time to consider.

Lord Denman, C. J., now delivered judgment. We at first entertained some doubt

whether the direction given to the jury at the trial was correct, because, although the defendant might have known the facts proved, it did not follow that he was obliged to draw the right inference from them, and if not, this writ of *mandamus* would not lie to correct his error of judgment. It therefore became material for us to inquire whether an overseer, upon application made to him for a certificate, and on formal proof of the facts stated, was bound under the provisions of the 3 & 4 Vict. c. 61, s. 2, to grant that certificate. That statute was passed, among other things, to amend the 4 & 5 W. 4, c. 85. It is necessary to consider the provisions of the statute of Wm. 4, with a view to see whether they afford any clue to the construction of the statute which amends it. Now the 4 & 5 Wm. 4, c. 85, requires by its 2nd section, that every person applying for a license to sell beer to be drunk on the premises, should deposit with the commissioner of excise a certificate of good character, signed by six rated inhabitants of the parish, and certified by one of the overseers. The 3rd section imposes a penalty of 5*l.* should the overseer neglect to certify, if the fact was so, that the persons signing the certificate of good character were rated inhabitants. Under that act, the overseer was compelled to give the certificate, which was in fact a mere certificate of attestation, but the six inhabitants were clearly not compellable to grant the certificate as to character. The section of the statute on which the present case turns is one substituted for that which existed in the statute of William 4. How then is it to be construed? The statute itself by a marked distinction in the imposition of penalties, seems to answer the question. By the 5th section the overseer is made liable to a penalty for refusing to grant a certificate of the rating, or for falsely certifying the rating, or for "falsely certifying; that a person is the real resident holder and occupier, contrary to the fact;" but the act imposes no penalty whatever on the overseer for refusing to certify that a person is the real holder and occupier, though such holding and occupation may in fact exist. The Court is therefore of opinion that, as to granting such a certificate, the overseer is in a situation like that of the six inhabitants under the former statute, that the granting of such a certificate is consequently a matter of discretion with him, and that this defendant is not compellable to grant it. The judgment must therefore be arrested.

Court of Common Pleas.

Lloyd v. Jones. Easter Term, 1848.

COUNTY COURT JURISDICTION — HEREDITARY WITHIN 9 & 10 VICT. c. 95, s. 58.— PROHIBITION IN RESPECT OF AN ALLEGED RIGHT OF FISHERY.

The 58th section of the County Court Act, 9 & 10 Vict. c. 95, which takes away from the County Courts cognizance of any action in which the title to any corporeal or in-

corporeal hereditaments shall be in question, does not apply to the case of a claim by custom on behalf of the inhabitants of a town to enter and fish on the lands of another, such claim not being to the title to a hereditament.

Held, also, that such alleged custom being in fact a custom for the inhabitants to have a profit a prendre in another's soil, had no existence in point of law.

A RULE nisi had been obtained in this case by the defendant for a writ of prohibition to the judge of the County Court of the county of Merioneth, to stay all further proceedings in the plaint on the ground of a want of jurisdiction in such judge.

The affidavit in support of the rule was that of the clerk to the defendant's attorney, and it was therein alleged that the plaint had been brought in respect of an alleged trespass by the defendant in going on the land of the plaintiff to fish in the river Treweryn, and was tried on the 13th of October, 1847, the counsel who then appeared for the defendant unsuccessfully objecting to the jurisdiction of the Court; that the evidence in the plaint established the formation of a society, in 1840, for the protection of the river Treweryn; that, in 1847, the inhabitants of Bala held a public meeting for the express purpose of declaring, as they then did, a claim by them of a right to fish in the Treweryn, under an immemorial custom; that in exercise of such claim, the defendant was sent out, on behalf of the inhabitants, to fish, and thus to assert their alleged right, and his having so acted was the trespass in respect of which the plaint had been brought; that notice in writing had been given by the defendant to the plaintiff, before the acts of trespass complained of, of his (the defendant's) intention to go out and fish for the purpose of asserting the right of the inhabitants of Bala; and that the defendant had in fact gone upon the plaintiff's land *bonâ fide* for that purpose. It was further stated that a notice had, before the trial, been served on the County Court judge, claiming, on behalf of the defendant, the right to have the plaint tried in one of the Superior Courts, on the ground of a want of jurisdiction; that, notwithstanding such notice and the objection taken at the trial, the judge proceeded with the plaint; that the case was then gone into, and several of the inhabitants of Bala examined, to prove—first, that the right of fishing and of going on the plaintiff's land, as claimed, did exist; secondly, that there was on the plaintiff's said lands a public right of footway; and thirdly, that there existed a right of common in the *locus in quo*. The judge, however, gave judgment against the defendant for 1*l.* damages and costs.

Talfourd, Serjeant, showed cause against the rule. The ground upon which the rule for the prohibition in this case rested was, that the proviso in the 58th section of the County Court Act, 9 & 10 Vict. c. 95, prevented the jurisdiction of the County Court of Merioneth from

applying to the present case, that proviso declaring "that the Court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, &c., shall be in question," &c. The affidavits filed in opposition to the rule set forth that the defendant was not a householder of Bala, but merely resident there; that there was no foundation whatever for the rights claimed on behalf of the inhabitants of Bala; that the judge of the County Court had required the defendant to establish some reasonable and probable ground for the claim of right, and having heard the whole of the evidence adduced for that purpose, decided that the defendant had completely failed to show a colour for any such claim of right, and thereupon proceeded to decide the matter of the plaint. With respect then to the first claim of a right of common, it was unnecessary to do more than say that there appeared no ground whatever for it. As to the second claim of a right to fish, it was not made with respect to any property or any grant or prescription, but it was merely said that the inhabitants of Bala had a right to enter the plaintiff's lands and fish in the river. In point of law it might well be doubted whether any such right could exist at all. There might be, according to the case of *Fitch v. Rawling*, 2 H. Bl. 394, a good custom for the inhabitants of a particular place or village to go upon the land of another and there play at cricket, for there a grant might be assumed. But the present claim is not for the purpose of recreation, but of a right to take the fish in the plaintiff's water—in fact a *profit a prendre*. It was, however, submitted as decisive of the present application, that the claim of a right to fish as an inhabitant of a place could not be considered as a claim to a hereditament, and therefore not within the proviso relied upon. [*Cresswell, J.* What the defendant said came to this,—You shall not try the question of right because some third person had a right to go upon the plaintiff's land.] As to the right of footway claimed, that could be no answer to an action for a trespass by fishing. Besides it could not either be considered as a hereditament. [*Williams, J.* There appeared to be no limit to the alleged right. The defendant might catch all the fish in the river.]

Mr. Lloyd, in support of the rule. The right of fishing, it was submitted, was an incorporeal hereditament, (*Com. Dig. tit. Piscary*, Steph. Com. Black.,) and the judge had no right to inquire into the title after the claim had been made in behalf of the inhabitants of Bala. *Tyson v. Smith*, 9 Ad. & E. 406; *Caghey v. McKay*, Crawford & Dixon Rep. (Irish,) 290; *Kinnersley v. Orp*, Doug. 499. Here the claim was made *bonâ fide*, and a notice given to the plaintiff beforehand. The case of *Tinniswood v. Pateson*, 8 Com. B. 243, was a strong authority to show that as soon as a plea of a claim to an incorporeal hereditament was set up the jurisdiction of the County Court became ousted. [*Coltman, J.* Is there

any authority to show that a *profit a prendre* can be claimed without any limit?] If even that be so, and the case be doubtful, the Court would perhaps allow the defendant to declare in prohibition in order to raise the question for decision.

Cur. ad. vult.

May 12th. The judgment of the Court was delivered by

Wilde, C. J. A rule was obtained in this cause calling upon the plaintiff to show cause why a writ of prohibition should not issue to the judge of the County Court of Merionethshire, and the ground on which the defendant claims to be entitled to the writ is, that the plaint in the County Court was brought for damages in respect of an alleged trespass on the plaintiff's land for the purpose of fishing, and the defendant says that he did the acts complained of under a claim of right as an inhabitant of Bala resting on immemorial custom, and as that claim may be disputed, the jurisdiction of the County Court is excluded by the statute 9 & 10 Vict. c. 95, s. 58, in which it is provided, that the County Court shall not have cognizance of any action in which the claim to an incorporeal hereditament may be disputed. We are of opinion that the jurisdiction of the County Court is not excluded by the proviso referred to, and that the rule must be discharged. The custom set up is in effect a custom for the inhabitants of Bala to have a *profit a prendre* in the land of another, and we think that no such custom can be set up. It has been held as undoubted law for two centuries that no such custom can exist at law. The question was decided in James the First's reign, in Gateward's case, 6 Co. Rep. 60, and since that the law has been considered as not open to any question or doubt, and the jurisdiction of the County Court cannot be excluded by the pretence of a custom which it has been determined for so long a time is without any legal existence. But further, supposing any question could arise regarding the custom, inasmuch as the claim in question is not a hereditament, the cause does not come within the operation of the proviso in the 58th section, hereditament whether corporeal or incorporeal being a thing which a man may have to him and his heirs by way of inheritance, and which do not go to his executors or administrators as chattels. *Termes de la Ley*, 388, Co. Lit. 6 a & 16. The rule, therefore, must be discharged with costs.

Rule discharged with costs.

Court of Exchequer.

Connop v. Challis and another. June 10, 1848.

ATTORNEY.—CONTINUANCE OF AUTHORITY.

Where a defendant has been taken in execution upon a judgment, the attorney for the plaintiff has no authority to give a discharge: he continues to be attorney after execution for the purpose of receiving the money only.

ACTION for an escape. Pleas, not guilty, and leave and license. Verdict for the defendants. The plaintiff had obtained a judgment against one Walmsley, who was taken in execution. The plaintiff's attorney being afterwards at the sheriff's office, was asked by the officer to agree to the defendant's discharge upon being paid 20*l.*, part of the amount, and receiving a warrant of attorney for 30*l.*, the remainder. This the attorney agreed to, and Walmsley was discharged. The present action had been brought to recover the whole amount of the judgment debt and costs.

Martin, (Jan. 15, 1848,) having obtained a rule to show cause why the verdict for the defendants should not be set aside and a verdict entered for the plaintiff,

Burchell, for the defendants, showed cause, and referred to *Savoury v. Chapman*, 8 Dow. 656; 11 Adol. & Ellis, 829. The rule was obtained upon the authority of that case, from which it was inferred that the duties of the attorney expire with the judgment. That such was the case to a certain extent he was ready to admit, but it was not entirely so, for the authority of the attorney revives for the purpose of execution. [*Platt, B.* The attorney is the proper person to receive the money, as he has a lien upon the costs.] He has considerable power over the judgment. In 2 Inst. 377, (5), Lord Coke observes:—"By the judgment against the defendant the warranty of attorney is determined, for thereby *placitum terminatur*, but only to sue execution (which is the fruit of the judgment) within the year; and if he sue out execution within the year, he may prosecute the same after the year; but if he sue out no execution within the year, then after the year is ended after judgment his warrant of attorney is determined." In order to support this rule it must be contended that the authority of the attorney ceases with the issuing of the writ of execution, but that is clearly not so, for there is no doubt that if a portion of the money only be levied, he can issue a second writ to recover the remainder. And in *Crozer v. Pilling*, 4 B. & C. 26, which was an action against the plaintiff for not discharging the defendant upon tender of debt and costs, the tender was made to the attorney upon the record, and the Court intimated a clear opinion that he was the proper person to receive payment of the debt and costs, and that the tender was properly made to him, therefore the action was maintainable. Besides an attorney may prejudice his client most materially after the judgment, by releasing it. It must, however, be confessed that *Payne v. Chute*, 1 Rob. R. 367, is at variance with the 2 Inst. [*Platt, B.*, referred to the rule of Court as to satisfaction piece.] 12 Mod. 440, and authorities cited in Chit. Arch. 56 (7 Ed.)

Martin, in reply, relied upon *Savoury v. Chapman*.

Per Curiam. We think a verdict should be entered for the plaintiff for 30*l.* The attorney is the proper person to receive the amount, but he has no implied authority to give a discharge.

Court of Bankruptcy.

Anonymous. July 14, 1848.

DEBTOR AND CREDITOR ARRANGEMENT ACT.—PRACTICE.

The Commissioners will not entertain a petition presented under the statute 7 & 8 Vict. c. 70, unless the petitioner sets forth in the schedule annexed to such petition the date when each particular debt was contracted.

A PETITIONER under the Debtor and Creditor Arrangement Act presented a petition, in which he omitted to state the time when the several debts contained in his schedule were contracted. The petition was referred to Mr. Commissioner Fane, who having examined it privately, upon taking his seat in Court made the following observations, which we publish, as they involve a matter of practice:—

Mr. Commissioner Fane. By the 7 & 8 Vict. c. 70, passed in 1844, commonly called the Debtor and Creditor Arrangement Act, a debtor, not in trade, is allowed, with the concurrence of one-third in number and value of his creditors, to petition this Court with a view to a *private* arrangement of his affairs. Upon the petition being presented, the Commissioner is privately to examine into the matter of the petition, and by section 2, if he shall be satisfied, amongst other things, that the petitioner's debts were not contracted by him, "without

reasonable probability at the time of contract of his being able to pay the same," the Commissioner may take certain further steps, pointed out by the act of parliament, with a view to a private arrangement. It is obvious, that the Commissioner cannot form a judgment as to the reasonable probability at the time of contract of the petitioner being able to pay his debts, unless he knows the time, when each debt was contracted, yet it constantly happens that petitions under this act are brought here, without the time when each debt was contracted, being specified, or even an attempt being made to specify the time, although the printed forms show the necessity of it. In all such cases I decline to proceed.

I make this statement *publicly*, though the petition is to be dealt with *privately*, because it is desirable that all persons concerned should know that, unless the time when each debt is contracted is stated in the petition, and the truth of that statement is sworn to, the Commissioner cannot proceed. My own opinion is, that the right conceded by this act to the debtor of avoiding publicity is a very great concession, and that it should not be extended beyond those cases where the inability to pay is attributable rather to misfortune than fault. If instead of this concession being applied sparingly, it is applied unsparingly, almost the only remaining check on the misconduct of debtors, public exposure, will be lost to the community.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Law of Attorneys.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, p. 18.

Law of Costs, p. 234.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, pp. 169, 190.

Bankruptcy, p. 213.

Lunacy, p. 216.]

ADMISSION ON THE ROLL.

1. *Notice*.—The Court will, in urgent cases, dispense with the Reg. Gen., Easter T., 9 Vict., which regulates the taking out a certificate as an attorney, where more than a year has elapsed from the admission, provided it appear that here has been no neglect in the party applying

to give as long notices as were in his power and that the notices so given afforded a reasonable time for inquiry into his conduct, &c., since his admission. *Ex parte Webb*, 4 D. & L. 641.

2. Where little more than a twelvemonth had elapsed since the admission of an attorney, the Court, under special circumstances, allowed him to take out a certificate, without giving the notices required by Reg. Gen., Easter Term, 9 Vict. *Weymouth, ex parte*, 5 D. & L. 60.

APPEARANCE SEC. STAT.

See *Notice of appointment*.

BILL OF COSTS.

Name of court.—Where an attorney's bill contains charges for business done in the Court of Chancery, and also in a Court of Common Law, the bill should specify the particular Court in which each portion of the business was done. *Ivimey v. Marks*, 4 D. & L. 709.

Case cited in the judgment: *Hill v. Humphreys*, 2 B. & P. 343; 3 Esp. 254.

COMPROMISE.

See *Undertaking*.

COUNTY COURT.

1. *Privilege of plaintiff.*—An attorney may, notwithstanding the 9 & 10 Vict. c. 95, sue as a plaintiff in one of the Superior Courts, and will, if successful, be entitled to costs as before that statute. *Lewis v. Hance*, 36 L. O. 68.

2. *Privilege of attorneys plaintiffs.*—Costs upon application for a rule.—The County Courts Act, 9 & 10 Vict. c. 95, does not apply to attorneys suing in their own right; they still retain the privilege of proceeding in the Superior Courts for sums under 20*l.*

This Court will not discharge a rule with costs upon the ground only of its having been moved for with costs. *Jones v. Brown*, 36 L. O. 100.

DELIVERY OF BILL.

"Month," meaning of.—To an action on an attorney's bill, the defendant pleaded that the plaintiff did not deliver "one month" before bringing the action, a signed bill of his fees, "pursuant to the statute in such case made," "contrary to the form of the said statute." The 6 & 7 Vict. c. 73, s. 37, requires a bill to be delivered "one month" before bringing an action, and by the interpretation clause, "month" is declared to mean "calendar month." *Held*, on special demurrer, that the word "month" in the plea was to be taken to mean "lunar month;" that the words "pursuant to the statute," &c., would not enable the Court to construe it as a "calendar month;" and that as the act required a delivery of a "calendar month" before the action, the plea was bad as tendering an inconclusive and immaterial issue.

Quare, if the plea was not also bad, as being an argumentative averment that the plaintiff did not deliver, one "calendar" month before bringing the action, a signed bill, &c. *Parker v. Gill*, 5 D. & L. 21.

Case cited in the judgment: *Burroughs v. Hodgson*, 9 A. & E. 499; 1 P. & D. 326.

FRAUDULENT CHARGES.

See *Taxation*.

JURISDICTION.

See *Undertaking*.

LIABILITY OF PROVISIONAL COMMITTEE.

See *Railway Company*.

LIEN.

On papers.—An attorney has a lien on the papers in a particular suit, not only for his costs in that suit, but for his general costs. And the Court will not interfere with that lien by ordering him to deliver up his papers on payment of the bill of costs in the particular suit, although the bill of costs has been made out and delivered separately; and the client suggests that the possession of the papers is necessary to enable him to carry on the proceedings, and that he will be damaged by the delay. *Broomhead, in re*, 5 D. & L. 52.

MISCONDUCT.

See *Striking off the Roll*.

NOTICE OF APPOINTMENT.

Appearance sec. stat.—The defendant not appearing to a writ of summons, an appearance was entered for him by the plaintiff *sec. stat.* after which he pleaded in person. The case not being tried within the proper time after issue joined, the defendant gave notice of his intention to move for judgment as in case of nonsuit. This notice was given by attorney. *Held*, that this was sufficient notice to the plaintiff of the appointment of the attorney by the defendant, and that it was not necessary for him to give notice of his bringing in an attorney on the other side. *Jones v. King*, 35 L. O. 345.

PAROCHIAL BUSINESS.

A retainer by parish officers of an attorney on parish matters is not binding on them together with their successors personally. *John Marsh v. Richard Davis, Robert Tibbott, James Davis, and William Evans*, 36 L. O. 56.

PARTNERSHIP.

Two solicitors having entered into partnership, each of them continued to attend to the business of his former clients, but on the partnership account; and one of the partners having proposed to invest a sum of money belonging to a client in a certain mortgage, the proposal was agreed to by the client, and the money was paid to the joint account of the partnership, at their bankers, for the purpose of the investment. The negotiations for the mortgage were broken off by the proposed mortgagor, but the partner by whom the proposal had been made to the client, untruly represented to the client that the mortgage had been effected, and thenceforward continued to pay the interest as if it had actually been done. Although the banking account was kept in the name of the firm, the moneys standing to the account belonged exclusively to the partner who committed the fraud; he alone attended to and had the control of the account, and the fraud was unknown to the other partner. Five years after the receipt of the money from the client the partnership was dissolved; and ten years after the dissolution of the partnership the partner who had committed the fraud became bankrupt, and the client, who from the time of the dissolution until the bankruptcy had continued to employ him as his solicitor, discovered the fraud. The client then filed his bill against the other partner to recover the money.

Held, that the defendant was originally liable to the plaintiff for the money received by the firm; that his original liability was continued, as well after as before the dissolution of the partnership, by the fraudulent representations of his former partner; and that in equity the limitation in bar of the claim did not begin to run in favour of the defendant until the time when the client discovered the fraud.

That the fraud and misrepresentation of one of the partners entitled the client to relief in equity against the other, not only if the case was one in which the client might have re-

covered in an action at law against such other partner, but also if the remedy at law against the other partner was barred by the lapse of time. *Blair v. Bromley*, 5 Hare, 542.

PRIVILEGE OF ATTORNEY PLAINTIFF.

See *County Court*, 1, 2.

PRODUCTION OF PAPERS.

F., a solicitor, by his answer, claimed the right of refusing to produce certain documents, on the ground of their having come into his possession as solicitor for *B.*, who denied by his answer that *F.* had ever acted as his solicitor. The plaintiff amended his bill, stating the claim set up by *F.*, but did not require *B.*, who was out of the jurisdiction, to answer the amendments. *Held*, that if *B.* appeared and did not interpose, the production of the papers would be ordered. *Blenkinsopp v. Blenkinsopp*, 36 L. O. 31.

PURCHASE.

Setting aside.—An agreement between a father, tenant for life, and an eldest son, tenant in tail, for certain considerations, to bar the entail, and convey the estate to the son, was followed within a fortnight by the sale of the estate by the son to the solicitor who had acted for both parties in the agreement. In a suit after the death of the son without issue, by the next remainder-man in tail, who was also heir at law of the son, to set aside both transactions, and to have the estates re-settled to the former uses, the Court was of opinion, upon the evidence, that both transactions were but parts of one scheme, contrived by the solicitor for his own benefit; but being also of opinion that, on the principle of family arrangement, the agreement between the father and the son was not necessarily an unfair one in itself, the Court set aside the second only, and dismissing the bill as to the 1st, decreed the solicitor to convey the estate to the plaintiff in fee. *Bellamy v. Sabine*, 2 Phill. 425.

RAILWAY COMPANY.

Liability of provisional and managing committee.—Where a person allows his name to be placed upon the provisional committee, and it is also inserted in the list of the managing committee, of which he is subsequently aware, and to which he does not object, such managing committee being authorized to direct the affairs of the company, he will not, without interference on his part in the affairs of such company, be liable to the attorney for his costs in any proceedings adopted by him by order of such managing committee, no bill having been obtained, or deed signed. It is, however, a question for the consideration of the jury whether, from all the circumstances, the committee are authorized to pledge the defendant's credit. *Williams v. Pigott*, 35 L. O. 614.

RETAINER.

Unauthorized appearance.—Where a defendant has been served with process, and an attorney, without authority, appears for him; if the attorney be insolvent, the defendant will be

relieved on equitable terms, provided he has a defence upon the merits. But if the attorney be solvent, the defendant will be left to his remedy by summary application against him.

But where a plaintiff, without serving the defendant, accepts appearance of an unauthorised attorney, the Court will set aside the judgment as irregular, with costs, and leave the plaintiff to recover those costs and expenses from the delinquent attorney. *Bayley v. Buckland*, 5 D. & L. 115.

Case cited in the judgment: *Hubbart v. Phillips*, 13 M. & W. 702.

SETTING ASIDE PURCHASE.

See *Purchase*.

SIGNED BILL.

Taxation.—The defendant, a London attorney, employed the plaintiff, also a London attorney, to go to Cambridge, and defend a person indicted for bribery at an election there. In 1841 and 1842, the plaintiff delivered to the defendant bills of costs unsigned, and in Feb. 1847, he re-delivered signed bills: *Held*, that the bills were taxable under 6 & 7 Vict. c. 73, s. 37. *Billing, in re*, 5 D. & L. 126.

STRIKING OFF THE ROLL.

Misconduct.—An application to strike an attorney off the roll of the Court, will not be granted upon the mere production of a similar rule obtained in another Court, unless there be an affidavit that he is the same person, and the application should not be made on the last day of term. *Anon., in re*, 1 Exch. Rep. 453.

TAXATION.

After bond. — Fraudulent charges.—Where an attorney proceeds to trial upon a bond of nearly two years' standing, given for costs in a previous action which have not been taxed, the Court will not, upon application made on behalf of the defendant, and upon affidavit of improper charges, postpone the trial until the bill shall have been taxed; but will prevent the attorney from entering up judgment until after taxation, or for more than the taxed amount.

The Court will also, under such circumstances, order the Master to report whether the bill contains any fraudulent charges, and also any other special matter, and make the costs of taxation dependent upon such report. *Nix v. Phillips and others*, 36 L. O. 35.

See *Signed Bill*.

UNAUTHORIZED APPEARANCE.

See *Retainer*.

UNDERTAKING.

Compromise. — Jurisdiction.—Where an arrangement between the solicitor for the defendants and the solicitor for the plaintiff is entered into for the compromise of a suit, and a personal undertaking is given by the one to the other to pay certain costs of the suit: the Court, in the exercise of its jurisdiction over solicitors, will compel the fulfilment of such undertaking. *Gilbert v. Cooper*, 35 L. O. 560.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 29, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

INQUIRY INTO CORRUPT PRACTICES AT ELECTIONS.

THE bill introduced into the House of Commons by Lord John Russell, “To provide for inquiry into the existence of Corrupt Practices at Elections for Members to serve in Parliament,” proposes to confer a new species of patronage on the judges, which we cannot help considering objectionable in more than one point of view. Whenever a select committee to whom any petition complaining of bribery or treating has been referred, considers it convenient or desirable that an inquiry should be instituted in the locality where corrupt practices are supposed to have taken place, it is intended that the inquiry should be conducted by two barristers, who are to be appointed by the senior judge of assize. The provision under which these appointments are proposed to be made is as follows:—

“That where any committee appointed under this act shall report that further inquiry and investigation regarding corrupt practices should be made on the spot by Commissioners appointed under this act, the Speaker of the House of Commons shall, by writing under his hand, certify such report to the senior judge for the time being in the commission of assize, or where there shall be no existing commission of assize, then to the senior judge for the time being in the last preceding commission of assize for the county within which the city or borough with respect to which the inquiry and investigation is to be made is situate; and such judge shall appoint two barristers to be commissioners for such city or borough for the purpose of

such inquiry and investigation; and in case by reason of the death, illness or absence of any such Commissioner, such inquiry and investigation cannot be proceeded with by him, it shall be lawful for such judge and he is hereby required to appoint a barrister to be a Commissioner in the place of the Commissioner originally appointed: Provided, that no barrister shall be appointed Commissioner who shall be of less than *three* years’ standing, or who shall be a member of parliament, or who shall hold any office or place of profit under the Crown, except the office of recorder of any city or borough; and the Commissioners so appointed shall with all convenient speed after their appointment enter upon and complete, in manner herein provided, the inquiry and investigation with respect to the city or borough for which they shall be appointed.”

The Commissioners are to be sworn, and power is given them to appoint and dismiss such clerks, messengers, and officers as shall be thought necessary. The Courts of Inquiry to be holden by the Commissioners are thus provided for:—

“That the said Commissioners shall from time to time hold Courts of Inquiry at such places as they shall deem convenient for the purposes of their inquiries; and the said Commissioners shall hold their first Court of Inquiry within the city or borough for which they shall have been appointed, or within *ten* miles thereof, and shall give notice of the time and place of holding such first Court of Inquiry to the returning officer of the same, and shall cause a like notice to be fixed against the town-hall, market, or other public building of such city or borough, or the place where the election of members to serve in parliament for such city or borough is usually held, and shall

also publish a like notice in some newspaper in general circulation in such city or borough, or the neighbourhood thereof, and the said Commissioners may adjourn any such Court from time to time and from place to place : Provided always, that where the Commissioners shall adjourn such Court of Inquiry to any place not within such city or borough, or within ten miles thereof, the said Commissioners shall in the minutes of their proceedings record the reasons for such adjournment, and shall in their report specially mention such adjournment and the reasons for the same."

The nature, extent, and duration of the inquiry must necessarily be left very much in the discretion of the Commissioners. Their duties are pointed out in the following section :—

"That the said Commissioners shall, by such lawful means as to them shall appear best for the discovery of the truth, inquire into the manner in which the election or elections mentioned in the report of the election committee for such city or borough has or have been conducted, and whether any corrupt practices were committed at such election or elections respectively, and if so, the said Commissioners shall, by such means as aforesaid, inquire into and ascertain the nature and particulars of such corrupt practices, and the persons, whether candidates, agents for candidates, voters or others, who have been parties to the same, and whether any such corrupt practices have been in compliance with any usage or custom in such city or borough, or have been new or casual in such city or borough; and the said Commissioners shall from time to time report to her Majesty the evidence which shall be taken by them, and what they shall find concerning the premises, and especially the said Commissioners shall report, with respect to the said election or elections respectively, the names of all persons whom they shall find to have been guilty of corrupt practices at such election or elections respectively, and all other things whereby, in the opinion of the said Commissioners, the truth may be better known touching the premises."

The reports of the Commissioners are to be laid before parliament, and they are authorised to summon witnesses and examine them on oath. They are to be paid at the rate of five guineas per diem for their services, together with travelling and other expenses.

It may be at once conceded that an investigation of this nature would probably be conducted most effectively and advantageously by persons of legal education and experience. We are at a loss to understand, however, why such a duty may not be performed as fully and efficiently by an attorney and solicitor as by a member of the Bar. In the

transaction of ordinary legal business, the duty of seeking out, discovering, examining into, and preparing evidence, exclusively devolves upon the attorney. The barrister only acts upon the instructions furnished and prepared for him by the attorney. As to the proceedings peculiar to elections, they are in general better known to the attorney than to the barrister. The former is constantly employed at elections in the capacity of an agent, and by that means acquires a minute practical knowledge of all the details, and a familiar acquaintance with the arts and devices, unlawful as well as innocent, to which unscrupulous persons resort at election contests. His attendance at the Registration Courts, where barristers do not attend in their professional capacity, gives the attorney an insight into the mode in which local influences are created and maintained. So far as regards previous habits, information, and experience, the attorney is at least as well qualified as the barrister to inquire into the existence of corrupt practices at elections. Without resorting to invidious comparisons as to the relative usefulness of either branch of the profession, or seeking to elevate the one at the expense of the other, we respectfully ask an explanation of the grounds upon which it is proposed to exclude, from Commissions to investigate Corrupt Practices at Elections, the members of the most extensive branch of the legal profession?

It is notorious that corrupt practices are sometimes resorted to by all parties at an election to such an extent that, when the contest is over, neither party finds it expedient to prosecute a charge of corruption against his opponent, under the conviction that if recrimination were resorted to, a case equally strong might be established against himself. Certain provisions were introduced in the "Act for the better Prevention of Bribery and Treating," (5 & 6 Vict. c. 102,) with a view to remedy this evil, which provisions, it seems, have proved in a great degree unavailing. In such cases it is quite obvious, that if two barristers be sent into a borough where corrupt practices have prevailed, and the cases they are to examine into, and the evidence to support those cases, has not been previously investigated and arranged, the journey of the Commissioners will in many cases be a mere farce. We presume it is with a view to meet this difficulty that the 18th section of the bill proposes :—

"That the Speaker of the House of Commons may appoint an agent, or agents to pro-

secute before the committees appointed under this act or any of them, or any Commissioners appointed under this act, any inquiries or inquiry to be made under the provisions of this act; and every such agent is hereby authorized from time to time to certify under his hand to the Commissioners of her Majesty's Treasury, what sum or sums of money is or are required to meet the necessary expenses for effectually prosecuting such inquiries or inquiry as such agent may be appointed to prosecute, including the sums proper and necessary to be paid to and for the witnesses who may be required to attend under this act; and the Commissioners of her Majesty's Treasury shall be authorized to advance to every such agent from time to time such sums as shall be needed for the purposes aforesaid."

We would remark in passing, that this clause is silent as to the qualifications of the agent to be appointed by the Speaker. It leaves it to the discretion of that officer to appoint a barrister, an attorney, or any other person he may think fit.

But the patronage which it is proposed to confer on the judges appears to us to be objectionable upon a totally different ground. The exercise of this patronage subjects the judges to imputations of nepotism and favouritism, and is by no means calculated to increase the independence of the Bar. Lord John Russell, upon introducing the bill now under consideration, referred to the power vested in the senior judges of assize, to appoint revising barristers, under the stat. 6 Vict. c. 18, s. 28, as a precedent for vesting in them the power of appointment under the present bill. The question is, whether the precedent is one that ought to be followed, and the principle extended? The appointment of revising barristers has not created any dissatisfaction on political grounds, but we question if the power has always been exercised in such a manner as to afford universal satisfaction in the profession. It converted the whole body of the junior Bar into place hunters. It became the practice for every barrister who desired to spend the Long Vacation profitably, to write to the senior judge of assize, requesting to be appointed a revising barrister. Only a few of the applicants could be successful, and the remainder were disappointed. We have heard of young gentlemen being called to the Bar at a particular period, with the express view of having this appointment conferred on them, and the juvenile candidate has been sometimes successful, to the infinite disgust of his seniors. These facts are mentioned, not to disparage either the Judges or the Bar, but because it appears to be more for the credit of both,

that situations of this kind should not be in the disposal of the one, or solicited by the other. All public appointments are properly liable to be canvassed, and it seems more in accordance with constitutional practice that the patronage should be vested in some branch of the executive government directly responsible to parliament. The Commission to inquire into the proceedings at a recent election is one that necessarily involves inquiries of a personal and political character. Whatever objections exist to the interference of the judges in the appointment of those entrusted with the duty of revising the Lists of electors, apply with tenfold force to the appointments contemplated by the bill under consideration. The conduct of the Commissioners to whom such a duty is delegated, as well as their reports, will be jealously scrutinized, and various considerations, too obvious to require elucidation, render it desirable that the members of the judicial body should have no concern, directly or indirectly, with investigations of this description.

CHARITABLE TRUSTS REGULATION BILL.

THE Lord Chancellor has laid on the table of the House of Lords a Bill "for facilitating and better securing the due Administration of Charitable Trusts, and for the further relief of Trustees," which requires the best attention of the profession and the public. We presume, from the late period at which it has been introduced, that it is not intended to press the measure during the present Session, but we have not learned that the Chancellor has made any distinct announcement of his intentions in this respect, and we hasten to lay before our readers an outline of the bill.

By the first section, it is proposed to invest the judges of the County Courts with jurisdiction over the administration of "any charity of which the clear yearly income does not exceed 30*l.*, and which is to be administered, or is applicable to or for objects or purposes within the district" of any judge of the County Court. The County Court judge is to be invested with jurisdiction in such cases, whenever an application is made to him by the Attorney-General, or any person authorized by the Attorney-General, or by any persons or body administering, or claiming to administer, any charity, or by any inhabitant or any parish or place within which, or for the benefit of objects within which, such charity

5. It is Treason to compass the Death of the Consort of the King only.

9. The Forgery of the Great Seal and other Royal Seals and the Sign Manual to cease to be Treason.

10. Scandalum Magnatum (2 Ric. 2, st. 1, c. 5, enforced by 12 Ric. 2, c. 11) abolished.

11. Perjury to include all cases of false swearing where an oath is required or imposed by law.

12. Rule in Homicide as to dying within a year and a day abrogated.

13. Manslaughter, as descriptive of a species of Homicide, abolished, and two new descriptions introduced; viz., *Extenuated Homicide*, to include all cases of wilful killing less than Murder, where not justifiable; and *negligent Homicide*, to include all cases of killing not wilful other than accidental.

14. Digest makes it Murder to kill officers, &c. although authority under which they act *unlawful*, if they believe themselves to be acting lawfully, and if party killed have notice that they purport to act under such authority.

15. Digest makes it manslaughter only, if, under the same circumstances, officers, &c., kill persons resisting them.

16. Consent of party killed under Extenuation of Homicide.

17. Duelling to cease to be Murder, unless attended with unfairness, and to be punished with Transportation for life, or not less than 7 years.

18. Procuring self-murder to cease to be Murder, and to be punishable only with Transportation for life, or not less than 7 years.

19. The law of Mayhem abrogated.

20. Constructive Breakings in Burglary and constructive Possession in Theft abolished.

21. An asportavit in Theft done away with.

22. Things adhering to the Realty, although only severed at the Time of taking, Deeds and other things savouring of the Realty, animals *jeu nature* not being fit for food, dogs, &c., and all other chattels personal, made the subjects of Theft, and so the necessity for special statutory stealing rendered unnecessary.

23. Instead of retaining Theft as an offence punishable with Transportation for 7 years, simple Theft made punishable with imprisonment not exceeding two years; and various aggravations introduced for the purpose of warranting Increase of Punishment.

24. A general Offence of Embezzlement, introduced to include all cases of Fraudulent Misappropriation when distinct possession obtained upon any obligation to return or specifically apply things obtained. By present law the offence is confined to Misappropriation by Bankers, Merchants, Clerks, Servants, &c., by special statutory enactments. The new offence will, amongst other things, include cases of breaking Bulk by Carriers, &c., which by present law is constructively brought within the Law of Theft.

The number of Statutory Enactments relating to Criminal Law has been extensively reduced by consolidation, especially those regarding Forgery. By the present law there

are 125 different varieties of punishment; these have been reduced to 18; and Quartering in Treason is abolished.

TAXATION OF PARLIAMENTARY COSTS.

We adverted a fortnight ago, in our Postscript, to the preparation of a draft of the proposed charges to be allowed on the taxation of the costs of parliamentary solicitors and agents, which requires much consideration, as well by the profession generally, as by those who are principally engaged in parliamentary business.

We understand that the Incorporated Law Society has actively taken up the matter, and are in communication with the authorities on the subject. It appears that some of the charges which have been allowed for many years are proposed to be cut down to an amount not much more than the costs in ordinary matters. The vast sums which have been received by counsel, solicitors, and agents, within the last few years, have, no doubt, led to a supposition that their charges may be justly reduced; but it should be recollected that the large harvests of fees reaped by a comparatively small number of practitioners, will be reaped no more by any one; and, whilst some of the larger parliamentary offices may still derive considerable incomes, the majority will not, at the old fees, be better remunerated than the important, difficult, and absorbing nature of the business renders just.

Many of the large items of railway costs, which have been animadverted upon, are capable of satisfactory explanation, and the enormous labour, expense, anxiety, and responsibility, which have been bestowed or incurred, go far to justify even the largest charges.

These circumstances no doubt will be ably explained to the Speaker, and we trust a just and liberal scale will be established. The result is important, not only to the solicitors of public companies, but to all who are engaged in supporting or opposing particular clauses affecting the interests of their respective clients.

We observe that liberal allowances are to be made to parliamentary agents, who are not solicitors. We think that an effort should be made to confine the practice on private bills to duly qualified attorneys and solicitors, and that saving the rights of the present agents, all other persons should be precluded from parliamentary practice.

THE CERTIFICATE DUTY.

In the present state of the public business, it appears that Lord Robert Grosvenor deemed it expedient, on the 20th inst., to intimate his intention to postpone till an early period of the next Session his motion for the Repeal of the Duty on Attorneys' Certificates. On the whole, we incline to think that this course had become unavoidable, and that it was prudent not to annoy the government with a discussion which would probably have led to no useful result, and which might have excited (though we hope not) some feeling of hostility towards the ultimate relief which is sought by the profession.

We should have liked to see the bill in print as a proof of the determination to urge forward the measure; but we presume it was not expected, in the deficient state of the revenue, that the tax could or would be spared this Session, and therefore no defeat has been sustained. It is indeed an important step gained, that so important a member as Lord R. Grosvenor should have heartily entered upon and taken charge of the case.

Unfriendly critics will probably, as they have heretofore done, ascribe this result to the delay which took place at the beginning of the Session; but it is palpable that if the exertions which were used at the end of February and thenceforward had been commenced on the very first day of the Sessions in January, the conclusion would have been the same. We trust that next Session there will be no disunion on the subject.

AUTHENTICATING DOCUMENTS UNDER CITY SEAL.

I HAVE lately had two powers returned from Demerara, in consequence of certain alleged informalities attending their authentication, which has occasioned great annoyance and additional expense to my clients.

It appears that there has been a recent decision of the Supreme Court at Demerara, to the effect that the Certificate of authentication by the Lord Mayor, annexed to the power, must be signed by himself, and the City Seal affixed, as required by the statute, instead of, as heretofore, the lithographed signature of Mr. Reynal, the Clerk of the Seals; and the Court have in every case held, where an objection has been taken, that a power executed or authenticated in the latter mode, is bad, and have refused it in evidence. The words of the statute are, "under the signature and seal of such justice," and the signature of the Clerk of the Seals is not a sufficient compliance with the act.

The powers sent out by me were properly executed, and I made a declaration verifying the signatures before the Lord Mayor; I then took them to the Lord Mayor's Court Office to have them authenticated, and I forwarded them to Demerara with the usual lithographed signature of "Reynal" at the foot of the certificate. The informality was pointed out to me by my attorneys at Demerara, and I was compelled to send out supplemental powers, reciting the former ones, and confirming every act that might have been done under them. After some demur at the Lord Mayor's Court Office, they obtained the signature of the Lord Mayor to the certificate to the new powers, in addition to that of "Reynal," which has passed muster in the colony, and this formality it will be necessary to adhere to strictly in all powers sent to Demerara. E. M.

MOOT POINTS.

LIEN ON HORSE FOR TRAINING.

IN reply to T. W. H.'s query in the Legal Observer for 15th July, I beg to inform him, that a right of lien confers of itself no power to sell the chattel for the purpose of discharging the debt. The creditor may, however, retain possession of the chattel, and at the same time proceed by action to judgment. But in the mean time, if he retains possession of a living animal under a right of lien, he is bound to feed it, and he may not use it except to give it proper air and exercise.

It may be well for T. W. H., however, to consider whether his client has a lien. It is true that in a *nisi prius* case tried before Best, C. J., (*Bevan v. Waters*, 1 Moo. & Malk. 236,) the judge held generally that a trainer has a lien on a horse for his charge in keeping and training him, yet recent cases have established the proposition, that where the owner of the animal whereon a lien is claimed has a right of access to it and of using it whilst in the possession of the creditor, such a circumstance is decisive against any implied agreement for a lien, and the claimant must prove an express agreement. Thus an agister of cattle has no lien because the owner has the right to visit them daily in order to milk them. *Jackson v. Cummins*, 5 M. & W. 350. In this case Baron Parke hints that Chief Justice Best's decision must be accepted with limitations. It is a usage amongst trainers and their employers that the owner of a racehorse not sent to be trained for a specified race, but generally, may remove the animal in the midst of the process, with a view to run him at any race he thinks proper, and consequently such a right of access negatives the right of lien. Hence the learned Baron doubts whether the trainer of a racehorse has any right of lien, except in the case of the animal being delivered to him to be trained for a particular race.

A. TEMPLER.

THE INCORPORATED LAW SOCIETY.

ANNUAL REPORT.

THE Council of the Society, on the 30th May, submitted to the Members a Report of the principal matters which had engaged their attention since the 18th May, last year, viz:— 1st, The consideration of Bills in Parliament for the Amendment or alteration of the Law. 2nd, The measures adopted for repealing the Annual Certificate Duty. 3rd, The proposed removal of the Courts from Westminster. 4th, The Practice of Retainers. 5th, The Fees or Taxes on the Administration of Justice. 6th, The supervision of the Profession and complaints of Malpractice. 7th, Encroachments on the rights of the Profession. 8th, The Stamp Duties on Mortgages and the Fees of Stewards of Manors. 9th, The Examination and Registration of Attorneys. 10th, The Usages of the Profession in Conveyancing Matters. 11th, The Communications with Provincial and other Law Societies. 12th, The general affairs of the Society:—comprising the Library, Lectures, Purchase of Property, Admission and Qualification of Members, and the state of the Fund.

1. *Law Bills in Parliament.*

At the close of the last session, and subsequently to the Annual Meeting of 1847, the attention of the Council was particularly directed to the bill for the *Taxation of Costs* on bills before the House of Commons. Several members of the Council attended the Select Committee of the House on the subject, and a petition was presented under the Seal of the Society.

It will be recollected that under the provisions of the act of the 6 & 7 Vict. c. 73, the bills of solicitors for business transacted by them in either of the Houses of Parliament, are liable to taxation by the Taxing Masters of the Court of Chancery. The bill in question proposed to authorize the Speaker to appoint one or more Taxing Officers, to whom the bills of all solicitors and parliamentary agents for business transacted in that house, were to be referred for taxation.

It is generally understood that the Taxing Masters of the Court of Chancery have performed their duties to the satisfaction of the Court, the profession, and the public, and the Council therefore felt a strong objection to the creation of a new tribunal for the taxation of part of their bills, the whole of which are liable to the taxation of those officers; and there seemed no objection to the bills of parliamentary agents being taxed by the same officers.

It appeared to the council that the proper mode of effecting the objects sought by the bill would be to extend the provisions of the act of the 6 & 7 Vict. c. 73, to the taxation of all costs included in the bill. The Council had been in communication with the Taxing Masters, who made no objection to this course, and, indeed, as they had hitherto, at the Speaker's request, taxed all the bills which he had occasion to refer for taxation under the House of Commons' Costs Taxation Act, 6 Geo. 4, c. 123, it was

not anticipated that the bill, as proposed to be amended, would make any material addition to the duties which they then performed.

The Lord Chancellor and the Master of the Rolls were addressed on the subject, and a statement in support of the views of the Council was submitted to the members of the House, and several deputations attended influential members on the subject, and meetings were held with the parliamentary solicitors and agents.

Many important modifications were made in the bill, and ultimately the amendments effected in the bill having removed many of the objectionable clauses, and the Council, being convinced that no benefit to the profession could arise from any further opposition, resolved to submit to the bill as amended.

Another bill, introduced late in the last Session of Parliament, related to the *Abolition of the Public Office in Chancery*, and the remodelling of the Affidavit Office. The Council submitted a clause authorizing the Lord Chancellor or the Master of the Rolls to make orders or issue commissions enabling solicitors to administer oaths as well in London as in the country. A similar provision had been sanctioned by Lord Langdale in the bill introduced by his lordship for consolidating and amending the Law of Attorneys, in the several Sessions of 1841, 1842, and 1843, and although the clause was ultimately withdrawn on account of its interference with the fees of office, then subsisting, the Council submitted that, on the abolition of the Public Office, and under the provisions of the proposed clause, the Lord Chancellor should be enabled to make orders and regulations (subject to such fees to be paid by the solicitor as might be deemed just,) under which the suitors and other deponents making affidavits, might be relieved of the inconvenience of attending from a distance, and at times which interfere with other important business.

The Council regret to say that they were unable to carry this proposed alteration; but they yet trust on a future occasion to accomplish an object which seems equally beneficial to the parties and their witnesses, and convenient to the practitioners.

Although the present session of parliament, which commenced in November last, has not been remarkable for any projected alterations in the law, there have been several bills introduced which required the attention of the Council.

One of these is a bill for abolishing some of the Offices in the *Petty Bag of the Court of Chancery*, the proposed enactments in which appear to be advantageous:—1. In abolishing some expensive sinecures: 2. Enabling attorneys and solicitors to practise in that office without the intervention of side clerks; 3. The remaining officer must be a duly qualified attorney."

The Lord Chancellor's bill for authorising

* This bill has been for some time deferred for the purpose of being amended.

certain officers to administer *Oaths in Chancery* afforded an opportunity to the Council for suggesting that all affidavits should be sworn and filed at the Record Office, instead of a separate Affidavit Office, and again to recommend that solicitors should be allowed to administer oaths as well in town as in the country.

This bill authorized the appointment of an additional clerk in the Affidavit office—an office which appeared useless, except for the purpose of collecting fees, because the duties can be better performed at the Record Office. The Council prepared a clause providing that the party to be appointed should not be entitled to compensation in the event of the office being abolished, which they submitted ought to take place. It is obvious that an affidavit being matter of record ought to be filed with the Clerks of Records and Writs, of whom there are four in number, well able to undertake this additional duty.

By one of the four bills introduced by the Attorney and Solicitor-General, relating to the administration of the Criminal Law by Justices of the Peace, it is proposed to establish *Courts of Special and Petty Sessions*. The Council submitted to the Attorney and Solicitor-General, the propriety of amending the 10th clause of this bill, which gives the Court of Special and Petty Sessions power to appoint clerks to such Courts. Considering the duties which the clerks of these Courts will have to perform, the Council urged that in order to the efficient discharge of such duties it would be expedient to appoint to that office persons who are qualified by a due extent of legal education and experience; and for this purpose they submitted, that a proviso should be added to the bill requiring such clerks to be attorneys or solicitors of one of the Superior Courts at Westminster. Another bill was introduced for altering the time for holding the Epiphany Quarter Sessions, which would have promoted the convenience of country practitioners, but was objectionable to some of the members of the Bar practising at these Sessions, and the bill has been postponed.

A bill to enable owners of a certain amount of property to act as *Magistrates* in regard to *County Rates* was also introduced, under which it would have been competent for practising attorneys to be appointed; but this bill has also been deferred.

Some of the clauses in the *Public Health Bill* were objectionable as originally proposed in regard to the appointment of the clerks of parochial and other public boards; but those clauses have been amended, and the appointment of such clerks remains in the hands of the local authorities.

The provisions in the bill to amend the procedure in respect of orders for the *Removal of the Poor* appear to be unobjectionable in themselves, but the power of the boards of guardians to appoint unqualified persons to conduct their legal business at the Petty, though not at the Quarter Sessions, remains unrepealed.

Two bills have been brought in for establish-

ing an *Appeal in Criminal Cases*, which, in principle, are favourable to the due administration of justice: one of them has been referred to a select committee, and the other is deferred until the select committee have reported on the subject.

In one of the clauses the Court is authorised to assign such attorney and counsel as the defendant may desire for the purpose of conducting such appeal. The committee submitted that it should not be *compulsory* on counsel and attorneys to conduct appeals, and it was therefore proposed that after "Attorney and Counsel," the words "they consenting to act therein" should be introduced.

The bills relating to *Joint-Stock Companies* and the audit of *Railway Accounts* appear to be useful measures.

The other bills down to the present period of the Sessions are the bills to remove doubts as to the law for the *trial of the controverted elections*; the bill relating to the *qualification of Members of Parliament*, and the exclusion of persons unable or unwilling to satisfy their debts; the bill for amending the law relative to *Remedies against the Hundred*, and the bill for regulating the Court of Bankruptcy and *amending the Bankruptcy Law*.

To these bills, and particularly to the last, which was introduced by Lord Brougham, the Council have given their best attention, and prepared some observations and objections to be submitted on the further progress of the measure.

2. Annual Certificate Duty.

Measures have been adopted for redressing the long standing grievance of the Annual Certificate Duty.

At the commencement of the session, a petition was prepared on the part of this Society for the repeal of the tax, and in the latter part of February a deputation arrived from the Manchester Law Association, for the purpose of obtaining a personal interview with the Prime Minister and the Chancellor of the Exchequer. The president, vice-president, and the late president, were appointed as a deputation from this Society, and the Chancellor of the Exchequer having fixed the 26th of February to receive the deputation, application was made to all the solicitors holding seats in parliament to attend the meeting. The deputation from this Society was accompanied by Mr. Bremridge, Mr. Cobbold, and Mr. Pearson. The Manchester deputation was accompanied by the members for Lancashire, Manchester, and Oldham: several members of both deputations addressed the Chancellor of the Exchequer, explaining the objects of the respective Societies, and presented memorials praying for the repeal of the duty. They were followed by several of the members of parliament, who cordially supported their views; and the Chancellor of the Exchequer expressed regret for the absence of Lord John Russell on account of indisposition, received the deputation with great courtesy and attention, and promised that the subject should have his best consideration.

The petition of this Society, under its common seal, was afterwards presented to the House of Commons, and a statement in support of it was printed. Copies of this statement were sent to all the Provincial Law Societies, and to solicitors in the several counties, cities, and boroughs, returning members to parliament, and it was forwarded to all the country members of this Society, and of the Metropolitan and Provincial Law Association, and to the leading solicitors in the districts where no members of the several law societies reside.

The Council prepared a bill for the repeal of the duty, and suggested the expediency of having petitions presented from the practitioners as well in England and Wales as in the Courts of Ireland and Scotland, and it was also suggested that the several petitions should be transmitted to the respective members of parliament representing the petitioners, with explanatory statements, showing the injustice of the tax, in order that the subject might be properly understood when the bill should be brought under discussion.

It was found necessary to confine this bill to England and Wales on account of the registration of attorneys, which takes place under the 6 & 7 Vict. c. 73, and the Council suggested that a separate bill should be introduced for Scotland, which might include the requisite provisions for such registration after the repeal of the Stamp Duty.

The Council then applied to Lord Robert Grosvenor, one of the members for the metropolitan county, to take charge of the bill, and the president, vice-president, and secretary, attended his lordship, and stated the views of the Council with respect to the bill. His lordship expressed a favourable opinion of the measure, and consented to take charge of the bill, and introduce it as early as the state of public business would permit.

Prior to this interview, namely, on the 22nd March, a General Meeting of the Profession was held in the Hall, and resolutions were adopted in support of the measure, and a petition agreed to, signed by attorneys and solicitors practising in London. This petition remained for several weeks at the Hall of the Society. Advertisements were inserted in the newspapers to call attention to the subject, and the petition was delivered to Lord Robert Grosvenor, to be presented either before, or at the time of introducing the bill, of which notice has been given by his lordship for this day, the 30th of May.

Connected with the Certificate Duty, the Council were requested at the time of the intended increase of the Income Tax, to forward a petition against that measure, and accordingly a petition was placed in the Hall, and received a considerable number of signatures; but the increase of the tax having been abandoned, the petition was withdrawn.

3. *Removal of the Courts from Westminster.*

As a branch of this long projected measure the Council have had under their consideration the proposed partial abatement of the evil by

holding the sittings in Chancery in Lincoln's Inn Hall. Nearly the whole of the junior bar of that Court have presented a memorial to the Lord Chancellor with regard to such of the sittings as are held during the prorogation of parliament, usually in Michaelmas and Hilary Terms. No doubt this would mitigate the evil, but the council deemed it right to submit to the Lord Chancellor an entire remedy of the grievance so far as it relates to the five Equity Courts, by praying that the sittings should always be held in Lincoln's Inn.

4. *The practice of the Retainers of Counsel.*

This subject has continued to engage the attention of the Council.

It will be recollected that at the last annual meeting they reported that in answer to the circular addressed in January 1847, to all the solicitors in London, the Council received much useful information, from which it appeared that comparatively few points in the practice were clearly settled and uniformly acted upon; that others, although well known and generally complied with, were injurious to the suitors and inconvenient to solicitors; and many were so doubtful that the most experienced practitioners, differed with regard to them widely in opinion. The Council, from the materials thus collected, assisted by their own professional knowledge, prepared with much care a series of rules to be observed in retaining Counsel, calculated to settle the practice, and to exclude doubt and dispute. Anxious that the proposed regulations should receive the sanction of the Bench and the Bar, the Council in the month of May last year submitted them to the Judges, to the Attorney and Solicitor-General, the Benchers of the Inns of Court, the Serjeants and Queen's Counsel.

In consequence of this, the Council were favoured with some valuable suggestions from two gentlemen of great eminence at the Bar, which were most carefully considered, and for the most part adopted. These being the only alterations proposed by the Bar, the Council would have felt at liberty to conclude that the rules generally were approved of by that branch of the profession; but to avoid the danger of mistake on this important point, they, at the end of Michaelmas Term last, addressed a letter to the Attorney-General, requesting to be favoured with the sentiments of the Bar on the proposed rules, and soliciting the benefit of their opinion in the final settlement of them before the commencement of another Term.

Having received no further objections or observations in consequence of this last application, the Council conceived the time had arrived for submitting the result of their labours to their professional brethren in general; and consequently a printed copy of the proposed regulations as last settled was forwarded not only to every member of the Society, but to every practising solicitor in London and to all the Law Societies in the country, inviting the favour of their sentiments upon them in their present state; the anxious wish of the Council

being that rules which are designed to regulate the practice on this important subject should be rendered as perfect as possible, and be adopted with the full concurrence and approbation of both branches of the profession.

The Council, after receiving all the suggestions which may be made in answer to their last circular, intend to convene another meeting for the purpose of considering and finally adopting the rules of practice to which the profession, they trust, will then strictly and invariably adhere.

5. Fees or Taxes on the Administration of Justice.

This subject, which has often engaged the attention of the Council, came under their especial notice in the last Session of Parliament, when a committee of the House of Commons was appointed, of which Mr. Watson, Q. C., was chairman, to inquire into the taxation of suitors in the Courts of Law and Equity by the collection of fees. The Council proposed to give all the information and assistance in their power to the Select Committee of the House of Commons in like manner as they had done to the Select Committee on the proposed removal of the Courts of Law and Equity. This offer was readily accepted, and different members of the Council and the Secretary attended the Committee to furnish evidence on all the points to which its attention was directed. This offer was renewed and accepted in the present Session of Parliament, by the Committee of which Sir John Romilly, the Solicitor-General, is the Chairman. Several members of the Council have been examined before that Committee, and all the information and assistance in their power have been given. It will be seen by the report of the Select Committee of the House, dated the 8th instant, that very important improvements have already been recommended, which will be highly beneficial to the suitor, and convenient to the practitioner, especially by the abolition of numerous fees, and the consolidation of the offices, and their better regulation.

6. Supervision of the Profession.

In the department of the supervision of the conduct of the members of the profession, the Council have had a considerable number of complaints of malpractice to investigate; and devoted much time, and, as they hope, beneficially, to the respective cases.^b

They have also directed their attention to several cases in which objections have been made to the readmission of attorneys, or the renewal of their certificates. The affidavits in support of the numerous applications which are made in each Term, are received from the Lord Chief Justice, and the facts inquired into. Three of these cases have been successfully opposed, and in others the parties have been allowed to renew their practice on payment of arrears and fines.

^b The names and details of these cases are for obvious reasons not stated.

7. Encroachments on the Rights of the Profession.

Amongst other invasions of the rights and interests of the profession, the Council received several complaints of the establishment of *Societies* in different parts of the country for assisting persons in the recovery of *Small Debts* under the act 9 & 10 Vict. c. 95. It appears that the object of these societies was to enable the members thereof, out of a common fund, to assist each other in carrying on suits in the *Small Debts' Court*, although they had no common interest in the subject-matter of the suits. The Council were advised that societies so constituted are illegal, and that the members are liable to be prosecuted for maintenance; but before instituting any proceedings they considered it proper to give notice to the solicitors of the societies complained of, in order that the parties concerned might withdraw therefrom, or at least abstain from carrying out any of the illegal objects contemplated by them, with an intimation that if they persisted in their course of proceeding, the Incorporated Law Society would feel itself called upon to prosecute the members, and bring the conduct of the solicitors under the notice of the Superior Courts.

In regard to two of such societies, the Council received information that they had discontinued their objectionable proceedings; and in other instances the Council are in expectation of obtaining further evidence to establish the charge.

The attention of the Council has also been directed to the encroachment on the province of professional men by persons engaged as *Agents in soliciting Patents*, and this subject is under consideration with a view to the application of a proper remedy for the evil.

8. Stamps on the Transfer of Mortgages.

The attention of the Council has been particularly directed to the decision of the Court of Exchequer in the case of *Humberstone v. Jones*, (16 Law Journal, Exchequer, N. S. part 2, p. 293,) by which it was determined that a deed stamp was requisite on the transfer of a mortgage where any additional security or power is inserted in the deed.

This decision being contrary to several previous authorities, and considerable doubt and inconvenience being likely to result therefrom, the Council directed application to be made to the Solicitor of Stamps and Taxes to ascertain whether there was any intention on the part of the government to revise the Stamp Act, or whether a declaratory act would be sanctioned for the purpose of removing the existing doubts; and the Solicitor stated that no instructions had been given to revise the Stamp Act, but that in consequence of the decision in *Humberstone v. Jones*, the Lords of the Treasury had authorised the Board of Stamps to remit the penalty, on affixing an additional stamp in cases included in the principle of that decision; and a remedy for the defect being thus provided, a declaratory act was deemed unnecessary.

Considering that this information might be acceptable to the solicitors in the country who are engaged in mortgage transactions, the Council communicated the result to the several Provincial Law Societies for the use of members of the profession.

Amongst other suggestions for the amendment of the law and practice, the Council have under their consideration the *Fees of Stewards of Manors*, in many instances disproportioned to the professional services rendered, and calculated to impede the dealings and transactions relating to copyhold property. This subject will have the attention of the Council when the expected new bill shall be brought in for the extension of the powers under the Copyhold Enfranchisement Act.^b

The Council have also had under their further consideration a proposal for raising the qualification, and improving the *practice of short-hand writers*, with a view to facilitating the admission of short-hand notes as evidence before the Court, and the subject is under the consideration of a sub-committee.

9. *Examination and Registration of Attorneys.*

The important duties of the examination of persons applying to be admitted on the Roll, and the Annual Registration of Attorneys and Solicitors, which have been confided to the Society, have been conducted, as the Council trust, to the satisfaction of the public and the profession. In the last four Terms 429 have been examined, of whom 400 were passed, and 29 postponed.

A question has arisen before the judges on the mode of admitting attorneys in the County Palatine Courts of Lancaster and Durham, who by the 3rd section of the 6 & 7 Vict. c. 73, may be admitted in such Courts on "satisfying the judges for the time being, that they are qualified to act as attorneys and solicitors."

By the present practice it appears that the applicants for admission to those Palatine Courts are admitted at the assizes without any sufficient public notice, and without any examination into their fitness and capacity. The number of persons who avail themselves of this facility of admission has recently, it appears, been considerably increased, and consequently one of the principal objects of the Attorneys' and Solicitors' Act is so far defeated.

The jurisdiction of the Palatine Courts being very important and extensive, it was submitted to the judges on the Northern Circuit, that the candidates for admission therein should give a Term's notice in the judges' books and to the Masters, of their application, and undergo an examination in the same manner as the attorneys and solicitors of the Courts at Westminster. This subject is still under the consideration of the judges.

^b This bill has since been brought in, and provides for the regulation of stewards' fees and the taxation of them under the provision of the Attorneys' and Solicitors' Act, 6 & 7 Vict. c. 73.

Another point has been raised relating to attorneys admitted in the County Palatine Court before 1843, and claiming to be admitted into the Courts at Westminster without examination, under the 45th section of the Attorneys' and Solicitors' Act. The Rules of Easter Term, 1846, made by the judges of all the Common Law Courts, under the 15th and 16th sections of the act, require all persons to be examined, unless previously admitted in the Court of Chancery, and make no exception in favour of County Palatine attorneys. There does not appear to have been any decision of the Court on the construction of the 45th section, with reference to County Palatine solicitors; and inasmuch as they are not examined in their own Courts, and have not availed themselves of the privilege conferred by the 45th section, of being admitted in the Superior Courts at Westminster on or before the 1st day of Michaelmas Term, 1844, the Council submitted to the judges that such attorneys ought to be examined according to the rules of Easter Term, 1846, to which the judges have acceded.

10. *Usages of the Profession.*

Particularly in conveyancing practice. Several points have been brought before the Council relating to the usages of the profession, which have been determined on the principle of former decisions entered in the Usage Book; and during the past year others have been added.

11. *Provincial and other Law Societies.*

The Council have continued to keep up their communications with the several Provincial Law Societies, not only in England and Wales, but in Scotland, relating to the proceedings adopted for the benefit and improvement of the profession.

The members are aware, by the report of last year, that the new Association of *Metropolitan and Provincial Solicitors* (which was formed soon after the passing of the County Court Act) sought the assistance of this Society, in their intended measures for supporting the just claims of attorneys and solicitors, and for promoting the improvement of that branch of the profession. The Council have been from time to time in communication with that eminently useful Society, and have rendered them such assistance as appeared to the Council consistent with the design and objects of this Society's Charter.

It appears that there are several important objects of usefulness to the profession, which may be pursued by the two Societies in common, and others which will receive the attention of each Society *separately*, and be followed out by their own independent means; and in aid of such objects the Council will be always ready to co-operate. From the exertions of both, and their occasional co-operation, the most beneficial results to the profession may fairly be anticipated.

It is gratifying to observe that a considerable

increase has taken place in the number of solicitors returned as members to parliament, all of whom have shown a marked attention to the true interests of their brethren.

12. *General Affairs of the Society.*

Lectures.—The Lectures have been continued as usual. Mr. Miller has completed a third course on Equity and Bankruptcy; Mr. Nalder a second course on Conveyancing; and Mr. Maynard, on the resignation of Mr. James Wilde, has delivered his first course on Common Law and Criminal Law. The Council have also availed themselves of the obliging consent of Mr. Warren to deliver a course of four Lectures on the Moral, Social, and Professional Duties of Attorneys and Solicitors, which the Council considered would be interesting and useful to the profession generally.

Library.—It is now nearly seven years since the Catalogue of the Library was printed, and the Council intend to revise and reprint it with the large additions made during those years. The number of books at present in the library amounts to 8,672. Considerable additions have recently been made to supply deficiencies in the Parliamentary Sessions' Papers, and the Council conceive it will be very desirable to render this branch of the Library as complete as possible; for this purpose the Sessions' Papers are wanted from 1801 to 1805 inclusive, and for the years 1811 and 1812. It is also desirable to complete the House of Lords' Appeal Cases from the year 1824 to the present time. To effect this object and to form a complete series of the Railway Acts, and of cases of claims to Peerages, the Council invite the members of the Society to contribute to the Library such of them as may be in their power.

The Council have deemed it necessary to correct a practice which had inadvertently arisen, of admitting clerks of members not subscribing to the Library, and to confine such admissions, except on urgent occasions for the convenience of members, to those clerks only who actually subscribe,—the enforcement of this regulation has tended greatly to promote regularity in the Library.

Property purchased.—The Council have been engaged in several questions concerning the title to the property agreed to be purchased on the South side of the Hall, and which received the sanction of the last annual and of a special general meeting.

It will be in the recollection of the meeting, that the purchase was made with the expectation that the Law Fire Insurance Company would take such portion of the ground as might be required for the purposes of the Society; but it appearing after negotiation between the two Societies, and consulting their respective surveyors, that a portion sufficient for the Fire Insurance Company could not be spared by this Society, the former company were permitted to relinquish the treaty, and the whole ground is now purchased for the purposes of the Society. It will now be necessary to receive the authority of the meeting

to raise the requisite sum to complete the purchase.

Admission Fee of Country Members.—The members will recollect that until the last Annual Meeting, the admission fee of country members was of the same amount as that of town members. The principle of a less annual subscription for country members being from the first recognized, the Council concurred in the expediency of reducing the admission fee, and the resolution was confirmed at a subsequent General Meeting. The admission fee of town members remains at 15*l.*, and the annual subscription at 2*l.*; whilst the country members pay 10*l.* on admission, and 1*l.* annually.

The Council regret the decease of 23 members during the past year, and to which number they have to add 14 members who have withdrawn principally on their retirement from practice. But it may be proper to remind the members, that on their quitting the labours and responsibilities of the profession, they need not retire from the society, for the charter expressly provides for members who have so retired, and there are still several members, formerly in the Council, who continue members of the Society. During the past year 43 new members have been admitted, and the number of town members is now 1081, and of country 288; making in all 1369 members.

PROCEEDINGS AND RESOLUTIONS AT THE ANNUAL GENERAL MEETING.

Read the circular convening the meeting and the minutes of the last Annual and Special General Meetings.

The President stated the vacancies in the offices of President, Vice-President, and in the Council and Auditors, and the names of the persons proposed to fill those vacancies.

A ballot was demanded for the election of ten members to fill the vacancies for members of the Council; and the President appointed the following members present as scrutineers to superintend the ballot during its progress, and to report the result to the meeting: namely, Mr. James Anderton and Mr. James A. Murray.

The following report was afterwards made by the scrutineers:—

We declare the votes given for the election of the ten members of the Council to be for—

| | |
|---------------------------|---------------------------|
| Benjamin Austen . . . 104 | Robert Whitmore . . . 101 |
| Keith Barnes . . . 99 | Thomas Wing . . . 102 |
| Robert R. Bayley . . . 99 | Edward Chester . . . 62 |
| John Coverdale . . . 100 | John Young . . . 72 |
| Edward R. Pickering 101 | Joseph R. Mullings 30 |
| John Innes Pocock 97 | John C. Cobbold . . . 20 |
| John J. J. Sudlow 99 | William S. Cookson 25 |

And that the Election has fallen upon the first nine gentlemen, and Mr. John Young.

(Signed)

James A. Murray,

James Anderton,

Scrutineers.

May 30, 1848.

And the President thereupon declared that Benjamin Austen, Keith Barnes, Robert Riddell Bayley, John Coverdale, Edward

Rowland Pickering, John Innes Pocock, John James Joseph Sudlow, Robert Whitmore, Thomas Wing, and John Young, were elected *Members of the Council* in lieu of those who go out of office by rotation, and of Michael Clayton deceased.

That Benjamin Austen be and he is hereby deemed and declared to be elected *President* of the Society.

That Thomas Clarke be and he is hereby deemed and declared to be elected *Vice-President* of the Society.

That Daniel James Lee, William Ford, and Henry William Woodhouse be and they are hereby deemed and declared to be elected *Auditors* of the accounts of the Society.

Read the Report of the Council.

RESOLVED,—That the report of the Council be received and entered in the minutes; and that such parts of the report as the Council think fit be printed for the use of the members.

RESOLVED,—That this meeting approves of, concurs in, and authorises the Council to complete a mortgage, with power of sale, to the Right Honourable Sir Lancelot Shadwell, Vice-Chancellor of England, the Right Honourable Sir Herbert Jenner Fust, Dean of the Arches, and William Wingfield, Esq., one of the Masters in Ordinary of the High Court of Chancery,^c of the Hall of this Society, and the messuages, erections, buildings, land, and hereditaments belonging to the Society, lying on the west side of Chancery Lane, in the Liberty of the Rolls, in the parish of St. Dunstan in the West, in the County of Middlesex, with the appurtenances, to secure the repayment of 10,000*l.* to be advanced to the use of this Society, with interest at 5 per cent. per annum. And this meeting authorises the said intended mortgagees to pay the said 10,000*l.* to Messrs. Goslings and Sharpe of Fleet Street, London, the Bankers of the Society, for the use of the Society.^d

Read the Auditors' Report of the accounts of the Society.

RESOLVED,—That the Auditors' Report be approved and signed by the President.

^c Trustees for the Legal and General Assurance Society.

^d This sum was raised towards completing the purchase of several houses on the south side of the present Hall and buildings of the Society, pursuant to resolutions of former General Meetings.

RESOLVED,—That a List of the Council, showing how many times each member has attended at meetings of the Council, and how many times on committees during the past year, be left in the Secretary's Office along with the annual accounts under the 10th Bye Law.

RESOLVED,—That the cordial thanks of the meeting be presented to Charles Ranken, Esq., the President, for his able and impartial conduct in the chair, and for his constant attention to the interests of the Society.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From June 20th, to July 21st, 1848, both inclusive, with dates when gazetted.

Armitstead, Richard, and John Musgrave, Whitehaven, Attorneys and Solicitors. July 4.

Barrow, Richard Bridgman, and Marmaduke Kelham, Southwell, Attorneys and Solicitors. July 7.

Bishop, Henry, and William Wells, Dursley, Attorneys and Solicitors. July 7.

Caiger, Frederick, and Lancelot Lipscomb, Solicitors. July 11.

Galsworthy, John, and John Nichols, 9, Cook's Court, Carey Street, Attorneys and Solicitors. June 27.

Keddell, Frederick, Thomas Barker, and Joseph Humphry Grant, 34, Lime Street, Attorneys and Solicitors. July 21.

Snowden, Henry, and John Booth Præston, Leeds, Attorneys, Solicitors, and Conveyancers. June 30.

MASTERS EXTRAORDINARY IN CHANCERY.

From June 20th, to July 21st, 1848, both inclusive, with dates when gazetted.

Bell, John Williams, Gillingham. June 23.

Borlase, John James, Helston. June 30.

Copeman, Thomas, Aylsham. June 28.

Crossland, Robert, Parson's Laue, Bury. June 20.

Gross, Woolnough, Alderton. June 30.

Hooman, Henry, Spring-bank-Villa, near Bewdley. June 20.

Mills, Austen Treffry, Redruth. July 11.

Badcliffe, William, Liverpool. June 23.

Shepherd, John Bullen, Stourbridge. June 30.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor of England.

Earl of Orford v. Earl of Albemarle.

May 11, 1848.

TRUST FOR SALE.—MORTGAGE.

The common trust for sale of real estates in a deed of settlement authorizes the trustee to raise money by way of mortgage for the

purpose of disencumbering other real estates.

THE suit in this instance had been instituted for the purpose of having it determined whether the common trust for sale in the deed of settlement of Lord Orford's estates in Dorsetshire authorized the surviving trustee of the settlement to raise money by way of mortgage, the

purposes of the trust being to disencumber other estates belonging to the family and situate in Norfolk. A reference had been taken to the Master, and he had found that a mortgage would be a beneficial mode of raising the money, subject to the question whether the deed permitted that course to be taken.

Mr. Walpole and Mr. De Gez now appeared on a petition to confirm the Master's report, and submitted the question to the Court.

Mr. Stinton appeared for the trustee.

The Vice-Chancellor said, he considered a mortgage to be within the scope of the trust, and directed the trustee to execute the necessary deed.

Vice-Chancellor Knight Bruce.

Ex parte Green, in re the Tring, Reading, and Basingstoke Railway Company. May 3, 1848.

PROOF.—RAILWAY SHAREHOLDER.

The secretary of a bankrupt railway company, although a shareholder, was allowed to prove against the estate of the company for the amount of his salary. Statute 7 & 8 Vict. c. 3.

The petitioner in this case was secretary to the Tring, Reading, and Basingstoke Railway Company, and he prayed leave to prove for 170*l.*, the amount due to him for salary. He was a shareholder in the company, and all the debts of the company had been paid.

Mr. Swanston and Mr. W. T. S. Daniel appeared for the petitioner.

Mr. Russell and Mr. Chandless, for the assignees, objected that the petitioner's remedy was by petition to the Court of Chancery; and also, that upon balancing the accounts the petitioner would be found indebted to the company.

His Honour said, that he would direct the accounts to be taken, and, if the balance was in the petitioner's favour, he might prove for the amount.

Rocke v. Matthews. Friday, March 10, 1848.

AFFIDAVITS.—EVIDENCE.

Affidavits filed in support of a special injunction cannot be read on the hearing of the motion after the answer has been put in.

The bill in this case was filed on the 12th of February, for dissolution of partnership, an account, and an injunction. Notice of motion for the injunction was given and served for the 23rd, the affidavits in support of it having been filed on the 22nd. The answer was put in on the 23rd.

Mr. Bacon and Mr. Terrell, in support of the motion, proposed to read the affidavits.

Mr. J. A. Cooke, for the defendant, objected to their being read, and cited *Norway v. Rowe*, 19 Ves. 157; *Morphett v. Jones*, id. 350; *Bodington v. Woodley*, 8 Sim. 167; and *Munser v. Jenner*, 2 Har. 600. He asked for the defendant's costs of the day.

Mr. Bacon admitted that the answer denied the plaintiff's title.

His Honour said,—Taking the title from the answer, although my individual opinion is of very little consequence, yet it is in favour of allowing the affidavits to be read; that is, the affidavits before the answer, as well as the answer. But my impression is, that at least the balance of authority is against it. I do not think myself warranted in following my own opinion against what I consider to be the balance of the authorities upon such a question. I will direct that if the bill shall be dismissed for want of prosecution, the defendant shall have the costs of the motion. I mean that unquestionably; but if not, then I reserve them. I think that highly reasonable.

Ex parte Fletcher, in the matter of the Trustee Act, 10 & 11 Vict. c. 96. March 24, 1848.

TRUST FUNDS.—COSTS.

The costs of a petition of a tenant for life of a fund cannot be paid out of the capital, the petition not being served on the parties entitled in remainder.

THIS was the petition of the tenant for life of a certain fund bequeathed to trustees and executors, in trust for her for life, with remainders over. The fund was invested in the purchase of a sum of consols, and subsequently, under the 10 & 11 Vict. c. 96, was, together with some money arising from the investment of dividends, transferred into the name of the Accountant-General. This petition was presented by the tenant for life, the widow of the testator, and prayed that the dividends might be paid to her, and that the costs might be taxed and paid by a sale of a sufficient part of the stock.

Mr. Selwyn appeared for the petitioner.

His Honour said, that he could not allow any portion of the capital which belonged to a third party after the petitioner's death, to be taken in the absence of such party. So much of the fund as represented any bygone dividends to which the petitioner was entitled for life might be applied in payment of costs.

Court of Eschequer.

Middleditch v. Ellis. May 30, 1848.

ACCOUNT STATED WITH MORTGAGEE.

A mortgagee, with consent of mortgagor, sold the premises mortgaged for payment of the mortgage debt; the proceeds were not sufficient for that purpose, and an account was stated of the balance: Held, that an action of debt could not be sustained upon the account stated.

DEBT for money lent and upon an account stated. Plea, never indebted.

The plaintiff was a mortgagee for 300*l.*, with power to sell, and held a bond as a collateral security. The property was subsequently sold by the mortgagee under the power and also with the consent of the mortgagor, but the proceeds

were not sufficient to discharge the debt. The parties afterwards stated an account as subsisting between them in respect of the sum remaining due. Upon this the action was brought, and a verdict was taken for the plaintiff, subject to leave to the defendant to enter a nonsuit, if the Court should be of opinion that an action of *debt* on the account stated would not lie.

Pashley having obtained a rule accordingly, *Lush* showed cause. The object of the account stated was, to prevent parties being compelled to prove the original cause of action, so that all papers and vouchers prior to the settlement might be destroyed. In *Foster v. Allanson*, 2 T. R. 479, a partnership by deed had existed between the plaintiff and the defendant, in respect of which, an account having been stated between them, it was held that an action of *assumpsit* might be maintained, notwithstanding the deed.

Pashley. There new matters were introduced into the account stated.

Lush. Yes, but Buller, J., said,—“ Even if no other articles had been introduced into the account but those relating to the partnership, I

should still be of opinion that *assumpsit* would lie. *Petch v. Lyon*, 15 L. J. Q. B. 393.

Pashley, in support of the rule, cited *Shack v. Anthony*, 1 M. & S. 573; *Drue v. Thorne*, *Alley* 72-3; *Roll's Ab.*, p. 9, pl. 11; *Com. Dig.*, “Pleader,” (2 W. 46); *Jones v. Ryder*, 4 M. & W. 32; *Lubbock v. Tribe*, 3 M. & W. 607; *Davis v. Gyde*, 2 Ad. & E. 627; *Atty v. Parish*, 1 New R. 104; 2 *Williams' Saunders*, 137 (c); *Baber v. Harris*, 9 Ad. & E. 532.

Lush, in reply, referred to *Moravia v. Levy*, 2 T. R. 483, n.; *Highmore v. Prinrose*, 5 M. & S. 65.

Cur. adv. vult.

Rolfe, B., now (July 13) gave the judgment of the Court. After referring to the case of *Foster v. Allanson*, he said, that none of the circumstances of that case were to be found in the present: here there was no suggestion of any new liability; it was simply an account stated of a balance due upon a deed the whole effect of which was to show how much still remained payable in respect of that security. The Court was therefore of opinion that this action could not be maintained, and that the rule for a nonsuit should be made absolute.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

EVIDENCE.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, pp. 169, 190.

Bankruptcy, p. 213.

Lunacy, p. 216.]

ACKNOWLEDGMENT.

See *Stamp*.

ALLOTTEE OF SHARES.

See *Joint Stock Company*.

ALLOTMENT.

See *Inclosure Act*.

AMBIGUITY.

See *Guarantee*.

BILL OF EXCHANGE.

In an action by indorsee against drawer of a bill of exchange, *Held*, that the issue that the

bill was accepted for the accommodation of the defendant, was proved by evidence that the bill had been accepted to take up a former accept-

by the same party, given for the accommodation of the defendant; and that it was not necessary to plead those facts in extenso. *Thomas v. Fenton*, 5 D. & L. 28.

See *Stamp*.

BILL OF SALE.

Schedule.—On the trial of an interpleader issue, the plaintiff tendered in evidence a bill of sale and schedule, the former of which assigned to him “all the goods, fixtures, household furniture, plate, china, &c., in and about a messuage, tenement, and premises, where he now resides, and being No. 2, Park Road, Old Kent Road, in the county of Surrey, and the chief articles whereof are particularly enumerated and described in a certain schedule hereunto annexed.” The schedule was in no way annexed to the deed, and was inadmissible for want of a stamp: *Held*, that the bill of sale was admissible in evidence without the schedule. *Dyer v. Green*, 1 Exch. R. 71.

CONTRADICTION OF WITNESS.

In an information under the revenue laws, a witness, who had given material evidence as to the fact in issue, was asked, on cross-examination, whether he had not said that the officers of the Crown had offered him a bribe to give the evidence. He denied that he had ever said so: *Held*, that evidence was inadmissible to show that he had made such a statement.

Quere, as to the extent to which evidence is

admissible, 6 & 7 Vict. c. 85, for the purpose of affecting the credit of a witness. *Attorney-General v. Hitchcock*, 1 Exch. R. 91.

COPYHOLD.

See *Inclosure Act*.

DEPOSITIONS IN CHANCERY.

See *Foreign Law*.

DEVISEE, DISCLAIMER OF.

Trust.—At the reading of the testator's will, soon after his death, the devisee in trust said "he ought to have had 5*l.* for being trust:" *Held*, that these words were so equivocal and ambiguous, that they should not have been left to the jury as proving his assent, as a trustee, to the devise.

Quære, whether an ambiguous assent to a devise, expressed by words or matter in *pais*, without deed, is sufficient?

Quære, whether a devisee in trust can disclaim by deed after previous assent to the devise in words. *Doe d. Chidgey v. Harris*, 16 M. & W. 517.

EXCISE OFFICER.

Maltster.—7 & 8 G. 4, c. 52, s. 33.—By stat. 7 & 8 G. 4, c. 52, s. 33, a maltster is liable to a penalty for treading or forcing together in the couch-frame any grain making into malt. The 1 Vict. c. 49, s. 5, enacts, that any excise officer, upon suspicion of the grain having been trodden or forced together, may throw the grain out of the couch-frame, and return it and lay it level in the couch-frame; and if any increase in the gauge of the grain shall be found, exceeding a certain proportion, then the increase so found shall be taken as *conclusive evidence* that the grain has been trodden or forced together, and the maltster shall thereupon be convicted in a penalty.

Upon an information before justices against the defendant for the penalty, it appeared that the excise officer had, in pursuance of an order of the Commissioners of Excise, returned the grain by piling it in a cone in the centre of the couch, and then distributing it equally to all parts of the couch. The increase in the grain when thus returned having exceeded that allowed by the act, the defendant was convicted: *Held*, that the increase in the grain, found by such a mode of returning it, was *conclusive evidence* of the offence within the 7 & 8 G. 4, c. 52, s. 33, as it did not appear that the mode of proceeding was unfair or improper, and consequently the conviction, was right; and that the officer has some, if not an absolute, discretion to exercise in the matter, provided he does not use it improperly. *Reg. v. Speller*, 1 Exch. R. 401.

FOREIGN LAW.

Declaration by party in possession.—*Depositions in Chancery*.—*Petition of right*.—*Compensation by France for confiscation of property of British subjects*.—A party claiming to have been the owner of lands, by virtue of a cession to him from A., since deceased, offered evidence, before any other proof of the cession,

that A. actually managed the property, and, while so managing, declared that he did so in the name of the now claimant: *Held*, admissible evidence.

On petition of right, a commission issued, and an inquisition was thereupon found and returned into Chancery. Before any further proceeding, the suppliant filed a bill against the Attorney-General to perpetuate testimony, reciting the petition. A commission to examine witnesses issued thereupon. The suppliant proposed to the Crown to join in the commission; but the Crown did not consent, and the commission issued *ex parte*. The Crown having traversed the inquisition, and the record being sent into this Court: *Held*, that depositions taken under the commission to examine witnesses were admissible evidence on behalf of the suppliant, where the deponents were without the jurisdiction of the Court.

Evidence being offered to prove the law of inheritance at a particular time in Alsace, one of the witnesses called for that purpose, a French lawyer practising in Alsace, stated, on cross-examination, that the feudal law had been put an end to in Alsace, *de facto*, "by the torrent of the French revolution;" and that there was a decree of the French National Assembly to that effect, of 4th August, 1789; and he said that he had learned this fact in the course of his legal studies: *Held*, admissible evidence, though no other proof was given of the contents of the decree. Per Lord Denman, C. J., Williams and Coleridge, J.J.; *dissentiente*, Patteson, J.

B. presented a petition of right to the Queen, claiming certain money of the Crown upon the facts therein stated, and praying that the Crown would order right to be done; that the Royal declaration should be endorsed on the petition to that effect, the petition referred to the Court of Chancery and duly received and enrolled, and the Attorney-General required to answer it; and that the suppliant might prosecute his complaint against him and such other persons as need might require, and have leave to make him and them parties, and pray to obtain relief. The Queen referred the petition to the Court of Chancery, and the Chancellor indorsed "Let right be done;" and thereupon that Court, by letters patent, appointed W. and others to inquire, upon the oath of jurors, of the truth of the matters in that petition. W., &c., returned into the Court of Chancery an inquisition taken accordingly, and finding

That B. was the eldest son of a nobleman who married an Englishwoman in England, and that the father was born in Germany, and B. in England. That, before and since the peace of Westphalia, the lordship and manor of Sultz, in Lower Alsace, was an ancient fief descendible to the male line. That in 1786, the line of feudatories having failed, it belonged to the Archbishop of Cologne to appoint a new line of feudatories, and that he nominated the father of B., who was invested.

That, before the Treaty of Munster, Lower Alsace formed part of the empire of Germany.

That, by that treaty, the Emperor of Germany ceded to the King of France all his rights and those of the empire in Lower Alsace, subject to a proviso that France should leave the then feudatories of Sultz in the liberty and possession they had theretofore enjoyed as immediately dependent upon the empire. That the treaty was ratified by subsequent treaties, the last-named being that of Versailles between England and France in 1783. That, in 1791, B.'s father ceded his rights to B., who was then 14 years old.

That, in 1793, B. and his father left Sultz, and took refuge with the Austrian army. That afterwards, in the same year, it was by the French Department of the Lower Rhine (in which Sultz was) decreed that B. and his father should be declared emigrants, and all their property confiscated in order to its being sold or alienated agreeably to the laws relating to emigrants. That, in pursuance of the decree, the lordship and lands of Sultz were seized as confiscated by the persons then exercising the powers of government in France, and were thenceforward treated as national property, and part thereof was sold under the authority of the French government, and the residue continued in the possession of that government until after the restoration of the House of Bourbon in 1814 and 1815. That, by the Treaty of Paris between Great Britain and France, 1814, it was stipulated that commissioners should examine the claims of his Britannic Majesty's subjects upon the French government for the value of moveable or immoveable property unduly (*indulment*) confiscated by the French authorities, loss of debts, or other property unduly detained under sequestration, since 1792. That, by the Treaty of Paris between Great Britain and France, 20th Nov., 1815, incorporating a convention of that date, it was provided, that British subjects having claims against the French government, who had, in contravention of the after-mentioned Treaty of Commerce, and since 1st Jan., 1793, suffered in consequence of confiscation or sequestration decreed in France, and their heirs and assigns, subjects of his Britannic Majesty, should, conformably to the treaty of 1814, be indemnified and paid, after their claims should have been recognized as legitimate, and the amount fixed, as after expressed: namely, that the claims of such subjects arising from laws made by the French government or any other claim whatsoever, (with an exception not comprising B.'s case), should be liquidated and fixed, and a sum be inscribed in the Great Book of the public debt of France, as a guarantee for the claimants, and further sums be furnished if necessary: three calendar months to be allowed to claimants residing in Europe to present their claims; and those of British subjects to be examined according to a mode directed. That, by the Treaty of Commerce of 1786, in case of rupture between England and France, the subjects of either, residing in the territory of the other, were to be allowed to continue residence undisturbed

while they conducted themselves legally, and, if ordered to withdraw, should have 12 months to do so, with their property, if they did not conduct themselves contrary to public order.

That in December, 1815, M. and others were appointed under the Great Seal, commissioners of liquidation, arbitration, and deposit, to execute the convention. That, on 12th January, 1816, B. transmitted his claim to the Prime Minister of France, who received it on 9th Feb. 1816, but stated that he considered it inadmissible.

That, by a convention between Great Britain and France, April, 1818, it was agreed that, to effect payment of capital and interest due to British subjects, which had been claimed under the convention of 1815, an annuity of 3,000,000 of francs should be inscribed in the Great Book of the public debt of France.

That, by stat. 59 G. 3, c. 31, reciting, that the commissioners had registered the claimants who had presented themselves within the period prescribed in the convention of 1815, and had paid certain sums, and that three of the said commissioners, by commission under the Great Seal, dated 1818, had been appointed commissioners of liquidation, arbitration, and award, to act on behalf of his Majesty in England, to consider the claims of British subjects properly presented, and the remaining commissioners had been appointed commissioners of deposit to receive the inscriptions from the French government; it was enacted, that the commissioners of liquidation should apportion and distribute the sums provided by France, and order them to be paid to the claimants who had duly registered, in full if the sums paid were sufficient, in part if insufficient; the rejection of claims, subject to appeal to the Privy Council, to be final, and a discharge of both governments in respect of any registered claim; that unappropriated sums inscribed in the Great Book of France might, by the commissioners of deposit, on receiving directions from the English Secretary of State for Foreign Affairs or the Commissioners of the Treasury, be sold, and the proceeds transferred to the commissioners of liquidation, to be invested in public securities, for the purpose of being applied to liquidate claims, or, if all were liquidated, to such purposes as the Commissioners of the Treasury should direct; and that the public securities should be deposited in the Bank of England in the names of the commissioners of liquidation, and the produce paid for the purposes in the act specified.

That B.'s name and claim were not registered till after the passing of the statute.

That, after all the registered claimants were paid, a surplus of 482,000*l.* had remained with the commissioners of deposit, of which 200,000*l.* had been applied to satisfy claims tendered after the time mentioned in the convention of 1815, and admitted under the authority of the Commissioners of the Treasury given in May, 1826; and the residue was paid into the bank on the government account by direction of the treasury, under statute 59 G. 3, c. 31.

That *B.*'s property, lost as above, with interest, was of the value of 364,000*l.* The Attorney-General having traversed the matters of the inquisition, and a verdict on the traverse being found for *B.*: *Held*, (on cross-motions, to enter the verdict for the suppliant, and to enter judgment for the Crown *non obstante veredicto*), that no right against the Crown appeared upon the inquisition. For that, assuming (1) a petition of right to be maintainable for money claimed as debt or damages; and, assuming (2), that *B.* was, for the purposes of this petition, a British subject:—

First. No undue confiscation was alleged, so as to justify the condition of the treaties of 1814 and 1815, nothing being shown but an adjudication by a French tribunal, which this Court could not see to be contrary to the law of France, or pursuant to any law which this Court could pronounce void as against British subjects.

Secondly. It did not appear that *B.*'s claim had been admitted and ascertained according to the treaties, his name not having been registered within the period provided for by the convention of 1815, and no order appearing to have been given by the Treasury to inquire into *B.*'s claim, or any request made to them for such order; and further, it not appearing that no other claimant might possibly come in for the surplus; and the inquisition not showing whether or not any inquiry had been made by the commissioners of liquidation into the merits of *B.*'s claim.

Thirdly, that the Queen could not be said to have received the money, the finding in the inquisition, that the surplus had been paid into the Bank of England on the government account, not showing that the sovereign had received a personal benefit from it. *Baron de Bode's case*, 8 Q. B. 208.

Cases cited in the judgment: *Banbury Peerage case*, 2 Selw. N. P. 756, 757 (10 ed.); 1 Stark. Ev. 332, n. f. (3 ed.); *Millar v. Heinrich*, 4 Camp. 155; *Lacon v. Higgins*, 3 Stark. N. P. C. 178; *Picton's case*, 30 How. St. Tr. 225, 491; *Middleton v. Janverin*, 2 Hag. Cons. R. 437, 442.

See *Libel*.

GUARANTEE.

Ambiguity.—Parol evidence.—In an action on the following guarantee:—"In consideration of your having this day advanced to our client, Mr. *V. D.*, 750*l.*, secured by his warrant of attorney, payable on the 22nd of August next, we hereby jointly and severally undertake to pay the same on default, &c. Dated the 20th of June, 1840."—the declaration stated, that in consideration that the plaintiff would, on the 22nd of June, 1840, lend to one *V. D.* 750*l.*, on the security of a warrant of attorney, payable on the 22nd of August then next, and would forbear and give time to *V. D.* until the 22nd of August, the defendant promised, &c.: *Held*, that the instrument was sufficiently ambiguous to admit of evidence to show that the advance was not a past one, but was made

simultaneously with the execution of the guarantee, and that no amendment of the declaration was necessary. *Goldshede v. Swan*, 1 Exch. R. 154.

Cases cited in the judgment: *Haigh v. Brooks*, 10 A. & E. 309; *Butcher v. Steuart*, 11 M. & W. 357.

INCLOSURE ACT.

Allotment.—Copyhold.—An award, allotting land under an Inclosure Act, coupled with the terms of the original claim to such allotment, is admissible in evidence to show that the claimant's interest in the lands in respect of the possession of which he claimed the allotment was less than the fee.

The determination of a copyhold interest may be shown without producing the copy of Court Roll. Thus, a declaration by the party in possession, that his interest was less than a fee, *e. g.*, for his own life only, would be primary evidence that it ceased to exist at his death. *Secus*, where he declared that he held "for life interest," that statement being consistent with one or more life interests coming into existence at his death.

By an inclosure act, the expenses attending the inclosure were to be raised by sale of part of the commonable lands, the balance, if any, of the proceeds to be repaid to the landowners. Accordingly, sales were made, and the surplus proceeds divided among the landowners, according to a "return rate," divided into two proportions, one calculated according to the possessioners' interest for life or years, the other the reversioners' proportion, calculated according to the time likely to elapse before their interest accrued into possession. A landowner in possession, aged 70, received a sum calculated on the assumption that his estate was held for life; but it did not appear that the party had any knowledge of the paper containing the rate, or of the data by which the sum he had received was fixed: *Held*, that the return rate was not evidence to cut down his interest to less than a fee.

By an inclosure act, claims to allotment were to be made in writing, and sent to the Commissioners. The claims made were entered by their clerk in a book, though not required by the act to be so kept. The claims allowed by the Commissioners were marked in the book "allowed," and attested by their initials affixed thereto. The entries were made in the course of business, and at the time they purported to bear date. *Seemle*, they were admissible in evidence, on proof of the clerk's death, and of a negative search for the original claims in the proper repository.

A declaration by a possessor of land, that he held "for life interest," does not necessarily admit that the right of possession would, immediately at his death, accrue to the reversioner, for one or more other life interests might exist consistently with the words used. The expression being merely ambiguous, would, if relied on for plaintiffs in ejectment, so far justify the judge in concluding, that no new trial would be granted; for the burden of

affirmative proof of title being on them, they adduced no evidence having a preponderance either way, so as to make it necessary to leave it to the jury.

Where evidence tending to establish a point already supported by more direct proof is improperly rejected, the Court will not grant a new trial on that ground, if they see that the case would not have been advanced further by admitting the particular piece of evidence. *Doe d. Welsh v. Langfield*, 16 M. & W. 497.

Cases cited in the judgment: *Crease v. Barrett*, 1 C., M., & R. 919; 5 Tyr. 458, 475; *Doe d. Lord Teynham v. Tyler*, 6 Bing. 561; *Harford v. Wilson*, 1 Taunt. 14; *Tyrwhitt v. Wynne*, 2 B. & Ald. 559; *Edwards v. Evans*, 3 East, 451.

I. O. U.

An I. O. U. is evidence of an account stated between the holder and the party signing it, but not of money lent to him by the holder. *Fesenmayer v. Adcock*, 16 M. & W. 449.

Cases cited in the judgment: *Curtis v. Rickards*, 1 M. & G. 46; 2 M. & W. 20; *Douglas v. Holme*, 12 A. & E. 641.

JOINT-STOCK COMPANY.

Allottee of shares.—Where an allottee of shares in a joint-stock company, which is afterwards abandoned, seeks to recover back the deposit paid as upon a failure of consideration, he must give in evidence the letter of allotment. *Clarke v. Chaplin*, 1 Exch. R. 26.

LIBEL.

Proof of indictment.—Name and address of foreign prince.—Information for libel alleged, that a person unknown had committed a murder on G., and that H. had been charged with it: the information set out the alleged libel, and charged that it imputed the murder to C. The libel, as set out, spoke of the murder of G. and stated that H. had been accused of it.

Held, that the inducement was proved by evidence that a person had been murdered, that H. was charged with the murder, and that on the inquest held upon the body, witnesses called the dead person by the name of G.; and *held*, that this last fact might properly be proved by the coroner who held the inquest, and that he might, for this purpose, use an instrument which he had drawn up as an inquisition, whether it was or was not a valid or formal inquisition.

C. was described in the information as His Serene Highness Charles Frederick Augustus William, Duke of Brunswick and Luneburg. His name was Charles Frederick Augustus William D'Este, and although he had formerly been reigning Duke of Brunswick and Luneburg, and was still commonly called by that title, he had ceased to be reigning duke *de facto*.

Held, that the description was sufficient. *Reg. v. Gregory*, 8 Q. B. 508.

Cases cited in the judgment: *Rex. v. Sulls*, 2 Leach's Cr. C. 861; *Rex. v. Graham*, Ib. 547.

See *Slander*.

MALTSTER.

See *Excise Officer*.

PAROL EVIDENCE.

Explaining written contract.—By a written contract, the plaintiff agreed to perform at the defendant's theatre, and the defendant agreed to engage her for three years, and pay her a salary of 5*l.*, 6*l.*, and 7*l.* per week in those years respectively: *Held*, that parol evidence was admissible to show, that according to the uniform usage of the theatrical profession, the plaintiff was to be paid only during the *theatrical season*—i. e., during the time the theatre was open for performance—in each of those years. *Grant v. Maddox*, 15 M. & W. 737.

See *Guarantee*.

PAYMENT OF POST-OFFICE ORDER.

Where the defendant, in answer to a letter demanding payment, sent a post-office order, in which the plaintiff was described by a wrong Christian name, and the plaintiff kept it, but did not cash it, although he was informed at the post-office that he might receive the money at any time by signing it in the name of the payee: *Held*, that this was no evidence of payment. *Gordon v. Strange*, 1 Exch. R. 477.

PETITION OF RIGHT.

See *Foreign Law*.

SCHEDULE.

Bill of Sale.

SLANDER.

Intention of defendant, how far material.—The use of words imputing an indictable offence is actionable or not, according to the sense in which they may fairly be understood by bystanders not acquainted with the matter to which they relate, or which may render them a privileged communication, and the secret intent of the speaker in uttering them in the presence of such bystanders is immaterial. *Hankinson v. Bilby*, 16 M. & W. 442.

STAMP.

Acknowledgment.—The acknowledgment of an accommodation acceptance of a bill of exchange, though it contain also an agreement to provide funds to meet the bill when due, is admissible in evidence without a stamp. *Motley v. Webb*, 36 L. O. 55.

SURETY.

Co-surety.—A surety in a bond may recover contribution from a co-surety, although at the time of becoming surety he takes a promissory note from the principal as a collateral security for the amount.

Evidence may, however, on the part of the defendant, be submitted to the jury, from which the jury are to conclude whether, in taking such promissory note, the plaintiff received it as a collateral security only, or as a waiver of his-right to contribution as against the defendant. *Done v. Walley*, 36 L. O. 120.

TRUST.

See *Devisee, Disclaimer of*.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, AUGUST 5, 1848.

‘ Quod magis ad Nos
Pertinet, et nescire malum est, agitamus.’

HORAT.

CHARITABLE TRUSTS ADMINISTRATION BILL.

THE Lord Chancellor has expressed a hope that this bill, the provisions of which were fully described in our last number, (*ante*, p. 259,) may become law during the present session of parliament. It has been committed in the House of Lords, but as it is announced that parliament will be prorogued on or about Saturday the 19th inst., and the bill has not yet been introduced to the House of Commons, we very much doubt if the Lord Chancellor's expectations will be realised. We confess this appears to us to be matter for congratulation rather than regret. A bill of this description, introduced at the fag end of a long session, could scarcely be expected to obtain the attention to which it is entitled, under any circumstances, and especially when the feelings of the legislature and the public are so strongly and painfully excited by the alarming events occurring in the sister country, as well as on the continent of Europe. It is undoubtedly desirable that the public, as well as the members of either House of Parliament, should understand the object of the bill now in progress, and pronounce as to its expediency.

The Lord Chancellor, in moving the second reading, explicitly stated that the main object of the measure was, to place every charity, the value of which is supposed to be less than 30*l.* per annum, under the administration and control of the judges of the County Courts. The Analytical Digest of the Reports of the Charity Commissioners is to be conclusive as to the value of all charities therein enumerated, and ac-

ording to this authority there are no less than 23,746 charities in England and Wales, the annual value of which is under 30*l.* These are to be transferred, without more, to the 60 judges of the County Courts, the intention being that each judge shall have exclusive jurisdiction in respect of all the charities applicable to objects or purposes within his district. According to this scheme, some judges will have a greater and some a fewer number of charities under his control. In some cases the district may include 1,000 charities, whilst other districts may not contain above 30, but the average number falling to the share of each of the County Court judges will be 396.

In addition to those cases which fall absolutely under the superintendence of the County Court judges under the operation of the act, in other cases, where the value of any charity exceeds 30*l.*, and it may be deemed expedient, the bill gives authority to the Court of Chancery to assign to the judge of any County Court such extent of jurisdiction as the Court shall think fit.* A large amount of responsibility, considerable labour, and some patronage, will devolve upon the judges of the County Courts by this plan. It may be worth while to consider—1st, Whether the County Court judges have leisure for the performance of the additional duties proposed to be thrown upon them; 2ndly, Whether they are peculiarly well qualified for the exercise of such a jurisdiction as that proposed to be

* The 6th clause, which gives this power, demands the particular attention of the practitioners in Chancery, who will have to follow their clients cases into the County Courts.

conferred upon them by this bill; and lastly, Whether it is expedient, upon public grounds, that small charities should be administered by a judge of the County Court, rather than under the influence of parties locally interested?

It appears, from the statement made by the Lord Chancellor, upon moving the second reading of the bill, that in the first nine months after the County Court Act came into operation, nearly half a million of complaints were entered. The return, however, on which this statement was founded, informs us that, of the whole number of complaints entered, those which came to a hearing, and to which the judges' personal attention must have been directed, amounted to 276,000 during the nine months. Upon an average, therefore, each judge has had to dispose of no less than 4,600 causes that came before him for hearing during nine months; or, in round numbers, 500 cases every month.

This return, too, was made before the country insolvent jurisdiction was transferred to the County Courts, under the statute 10 & 11 Vict. c. 102. We have no materials before us for estimating the time which is taken up with the investigation of insolvent cases in the country, under the varied and anomalous provisions of the several insolvent acts now in force; but any one who visits the Insolvent Court in Portugal Street, will observe that the town Commissioners think it their duty closely to examine the schedule, and inquire into the case of every insolvent, whether he be opposed by his creditors or not. If the same course be pursued by the judges of the County Courts, the insolvent jurisdiction recently conferred on them must have caused a considerable increase to the duties which they previously discharged; and if the control and superintendence of four hundred small charities is cast upon an officer who has already so many important public duties to perform, we are not without apprehensions that the County Court judges will be overworked.

But are the County Court judges peculiarly competent for administering small charities? It may be said, they are as well qualified as the person holding the Great Seal. We venture respectfully to doubt this. The persons holding the Great Seal have for centuries been persons of great capacity and established character. It is not to disparage the County Court judges, to say they hold no such position in the estimation of any portion of the community,

and are a very different class of men from those usually entrusted with the Great Seal. But apart from all individual comparisons, be it remembered, that the learned person presiding in the Court of Chancery exercises his authority in respect to charities, upon certain well defined and established principles, with the aid of officers of great experience. We should be glad to know how many of the judges of the County Courts have any professional knowledge of the principles upon which the Law relating to Charities has been administered by the Court of Chancery, or any practical experience as to the mode of administering any public charity? Not above five or six amongst sixty—or not one in ten—of the County Court judges ever practised in the Court of Chancery, or professes to have any practical knowledge of its proceedings. Yet, in the County Court judges the bill proposes to vest all the power now vested in the Court of Chancery, expressly providing that, as regards charities the incomes of which do not exceed 30*l.*, there shall be no appeal from their decisions.

It is not unreasonable to expect that as soon as the judges of the County Courts begin to exercise the absolute authority proposed to be conferred on them by this bill, individuals who have heretofore superintended the administration of small charities disinterestedly and gratuitously, in various localities, will gradually decline to interfere, and that the management will be left exclusively to the judges and hired servants appointed by them. Whether this state of things is likely to be advantageous to the charities, a short time will disclose. The scheme undoubtedly affords abundant opportunities for jobbing, against which it is to be hoped the sense of public responsibility will be a sufficient safeguard. It may be doubted, however, whether the expenses attendant upon applications to the Court of Chancery in the cases of small charities, might not have been provided against in some manner less objectionable than that now proposed. It seems at least questionable, whether the total abandonment of his functions by the Chancellor, and the transfer of his authority over small charities to gentlemen who have held public offices only since the establishment of the County Courts, and in whose competency for the performance of such varied duties the country may be excused if it has not yet learned to place unlimited confidence, will prove either satisfactory or beneficial to the public.

ENCROACHMENTS ON PROFESSIONAL RIGHTS.

RECEIVERS OF DROITS OF ADMIRALTY.

It appears that little notice has been taken of the important appointments which have been made under the 9 & 10 Vict. c. 99, usually known as the Salvage Act. The notaries public, many of whom are also attorneys, are seriously affected in their interests by these appointments.

By the third section of the above act of parliament, several persons have been appointed by the Receiver-General of Droits of Admiralty, to act under him at the several ports in England, under the style of "Receivers of Droits of Admiralty;" and by the 16th section, great powers are conferred upon such receivers in the examination upon oath of masters of vessels, whose ships "may be or may have been in distress;" and for every such examination the receiver is entitled to receive from the owner of the vessel or cargo, or out of the produce of the sale thereof, the sum of *one pound*.

In some places persons have been appointed Receivers of Droits who have had no previous connexion whatever with the profession; and it is the opinion of some, whose experience entitles them to respect, that the reports of examinations taken from masters of ships and forwarded by the receivers to the Secretary of the Committee for managing the affairs of Lloyd's in the city of London, will be prejudicial and injurious to the owners of vessels and cargoes, as such statements will give immediate publicity to circumstances which it would be, in several instances, very desirable to withhold, until claims upon underwriters and others are properly adjusted under protests from a notary public.

It is also apprehended that the exercise of the duties of "Receivers of Droits of Admiralty" will much interfere with and injure the practice of notaries public, and it is undoubtedly a great hardship upon the latter that tradesmen should be appointed to the office of "Receivers of Droits of Admiralty," and thereby be enabled to exercise the powers conferred by the 16th section of the Salvage Act, particularly as such tradesmen are at once placed upon an equality with solicitors and notaries, without being subject to the expenses which are borne by them in exercising their professional duties.

It would also appear that the power given

by the act of parliament to administer oaths is inconsistent with the act which was passed in the 6th year of the reign of his late Majesty for the more effectual abolition of oaths and affirmations.

We trust that these observations will draw the attention of the profession to the objectionable appointments we have mentioned, and that steps will be taken in the proper quarters to effect an alteration of those clauses in the act which have been referred to, as it is quite clear that the appointments in question should have been confined to solicitors or notaries public.

COPYHOLD ENFRANCHISEMENT BILL.

We understand that it is not expected that this measure will proceed beyond the House of Lords during the present session. The opinion of the profession in general is, no doubt, in favour of a compulsory enfranchisement, but the terms on which such enfranchisement should be effected ought not to be left to the surveyors or valuers alone, but should be sanctioned by the judgment of the Commissioners, with power of appeal to the Court of Common Pleas in the form of a special case, or of the trial of an issue before a jury.

There is danger that the valuers (though one of them is to be chosen by the tenants) will in many instances be under the influence of the lords of manors; and the injustice which might result from such influence should be counteracted—first, by the power of the Commissioners, and afterwards by a final appeal to one of the Superior Courts. It is true that the bill provides for framing rules and regulations to be submitted to parliament, but subject to those rules and regulations, the valuers have absolute power to fix the terms of enfranchisement.

This is manifestly contrary to the general course of administering justice. In bankruptcy more than one appeal is provided, and so in all the Superior Courts. These enfranchisements will often involve a large amount of property, depending between a powerful lord and a humble copyholder, and due safeguards should be provided in favour of the latter.

We wish well to the bill in its general scope and object, but trust it will be further amended before it is passed into a law.

ASSIGNMENT OF LIFE POLICIES' BILL.

THE 1st section of this bill, comprising the power of assigning policies of assurance, would effect a useful alteration in the law, but should be extended to all *choses in action*: such as bonds, covenants, agreements, &c.

Where a chose in action has been assigned, and it becomes necessary to take proceedings in the name of the original party, much difficulty frequently exists, for he may have died without leaving any representative, or may be bankrupt, or insolvent, or abroad; and even when a proper representative has been found, he may be unwilling to lend the use of his name in proceedings for the costs of which he will be primarily liable.

It is manifest, therefore, that the law ought to be amended, and if the 1st section were extended to all choses in action, the measure would be unobjectionable; but we see no reason for the other clauses in the bill, by which parties are to be relieved from proving their case, and the burthen of proving a negative thrown on the insurance companies.

It may be proper also, that before the assignee is allowed to institute proceedings, he should give notice of the assignment to the party sought to be charged, and furnish a copy of the assignment and produce the original for inspection.

EVIDENCE OF PROCLAMATION OF FINES.

A BILL has been brought in by Mr. Cornwall Lewis and the Solicitor-General, to dispense with evidence of the proclamations on fines in the Common Pleas. Unnecessary trouble and expense are occasioned by parties being required to procure evidence of such proclamations having been in fact made: it is therefore proposed to enact, that all fines heretofore levied in the Court of Common Pleas shall be conclusively deemed to have been levied with proclamations, and shall have the force and effect of fines with proclamations: provided that such enactments shall not extend to any proceedings at law or in equity now pending.

This bill is no doubt intended to meet the difficulty of procuring evidence in cases in which it may be required after the lapse of 15 years since the abolition of Fines and Recoveries.

LORD BROUGHAM'S BANKRUPT RELEASE BILL.

THIS bill, introduced by Lord Brougham on the 31st July, proposes—1st, That the Commissioner under any fiat may order the discharge of a bankrupt who is in prison for debt at the time of obtaining his protection from arrest.

2ndly, That where a bankrupt's examination has been adjourned *sine die*, or his certificate has been suspended or refused, and he is in execution on a *ca. sa.*, the Commissioner may order his discharge after he has undergone such term of imprisonment as the Commissioner may deem a sufficient punishment, not exceeding two years.

3rdly, That no person shall be detained more than two years under a *ca. sa.*, unless by special order of the Court from which the *ca. sa.* issued; and the gaoler is to release the prisoner at the end of two years, unless served with an order authorizing his detention.

This measure appears to carry the abolition of imprisonment into a new class of cases. The commercial community are not disposed to sanction any further relaxations.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the *present* Session of Parliament, printed in this and the last volume of the *Legal Observer*, are as follow:—

- Extending Time for making Railways, vol. 35, p. 204.
- Regulating the Queen's Prison, p. 558.
- North American Passengers, p. 581.
- Crown and Government Security, p. 600.
- Oaths in Chancery, vol. 36, p. 7.
- Stamp Duties Assimilation, p. 8.
- Trial of Controverted Elections, p. 23.
- Removal of Aliens, p. 182.
- Annual Indemnity, p. 221.

SUSPENSION OF THE HABEAS CORPUS ACT (IRELAND).

11 & 12 VICT. c. 35.

An Act to empower the Lord Lieutenant or other Chief Governor or Governors of Ireland to apprehend, and detain until the 1st day of March, 1849, such persons as he or they shall suspect of conspiring against her Ma-

jecty's Person and Government. [25th July, 1848.]

1. *Persons imprisoned in Ireland for high treason, &c. may be detained till the 1st March, 1849, and shall not be bailed or tried without an order from the Privy Council.*—Whereas a treasonable and rebellious spirit of insurrection now unfortunately exists in Ireland: Therefore, for the better preservation of her Majesty's most sacred person, and for securing the peace, the laws, and liberties of this kingdom: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons who is, are, or shall be within prison within that part of the United Kingdom of Great Britain and Ireland called Ireland, at or on the day on which this act shall receive her Majesty's Royal Assent, or after, by warrant of her Majesty's most Honourable Privy Council of Ireland, signed by six of the said Privy Council, for high treason or treasonable practices, or suspicion of high treason or treasonable practices, or by warrant signed by the Lord Lieutenant or other chief governor or governors of Ireland for the time being, or his or their chief secretary, for such causes as aforesaid, may be detained in safe custody without bail or main-prize until the 1st day of March, 1849, and that no judge or justice of the peace shall bail or try any such person or persons so committed without order from her said Majesty's Privy Council until the said 1st day of March, 1849, any law or statute to the contrary notwithstanding.

2. *Persons to whom warrants of commitments are directed shall detain the persons so committed in safe custody.*—*Persons charged with custody, as also place of detention, may be changed by warrant as herein mentioned.*—That in cases where any person or persons have been before the passing of this act, or shall be during the time this act shall continue in force, arrested, committed, or detained in custody by force of a warrant or warrants of her Majesty's most Honourable Privy Council of Ireland, signed by six of the said Privy Council, for high treason or treasonable practices or suspicion of high treason or treasonable practices, or by warrant or warrants signed by the Lord Lieutenant or other chief governor or governors of Ireland for the time being, or his or their chief secretary, for such causes as aforesaid, it shall and may be lawful for any person or persons to whom such warrant or warrants have been or shall be directed to detain such person or persons so arrested or committed in his or their custody in any place whatever within Ireland, and that such person or persons to whom such warrant or warrants have been or shall be directed shall be deemed and taken to be to all intents and purposes lawfully authorized to detain in safe custody, and to be the lawful gaolers and keepers of such persons so arrested, committed, or detained, and that

such place or places, where such persons so arrested, committed, or detained are or shall be detained in custody shall be deemed and taken to all intents and purposes to be lawful prisons and gaols for the detention and safe custody of such person and persons respectively; and that it shall and may be lawful to and for the Lord Lieutenant or other chief governor or governors of Ireland for the time being, by warrant signed by him or them, or for the chief secretary of such Lord Lieutenant or other chief governor or governors, by warrant signed by such chief secretary, or for her Majesty's Privy Council of Ireland, by warrant signed by six of the Privy Council, from time to time, as occasion shall be, to change the person or persons by whom and the place in which such person or persons so arrested, committed, or detained shall be detained in safe custody.

3. *Copies of warrants to be transmitted to the Clerk of the Crown for Dublin.*—That copies of such warrants respectively shall be transmitted to the Clerk of the Crown in and for the county of the city of Dublin, and shall be filed by him in the Public Office of the Pleas of the Crown in the city of Dublin.

UNITED LAW CLERKS' SOCIETY.

THE SIXTEENTH ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

Read at the Anniversary Dinner, June 28, 1848.

ALTHOUGH the following report shows considerable increase in each of the principal branches of the Society's expenditure, it must be remembered that the additional expenditure has produced increased assistance to the members and their families, who have thereby more widely experienced the benefits the Society has been designed to afford them.

The benefits which the Society grants out of its chief or general fund is threefold, consisting, first, of a weekly allowance during illness for a period not exceeding two years; 2ndly, of a similar allowance during life when entirely disabled from labour, at whatever age; and 3rdly, of a payment of 50*l.* on the death of a member, and of half that sum on the death of a member's wife.

During the year, 32 applications have been received from members whom illness has prevented from following their employment, for the allowance granted them by the Society when thus afflicted. These applications were all granted, and a sum of 231*l.* 8*s.* expended in satisfying them. These applications do not result from cases of trifling indisposition, but generally of severe affliction. Of the 32 just mentioned, two were cases of insanity, and of the others seven ended in death. In meeting claims of this description alone this Society has expended a sum of 1,738*l.* 13*s.*

The next claim arises from the assistance granted to members for life when disabled from labour by old age or permanent affliction of any kind. At the last anniversary there

were two such claimants. Since then another has been added. Each of these members receives a weekly allowance amounting yearly to 31*l.* 4*s.*—nearly the interest of 1,000*l.* The allowance will continue throughout life, and on their decease the family of each will receive a further sum of 50*l.*

The Committee announce with pain that the number of deaths amongst the members (which in the preceding year was 5) has this year increased to 10, which has required an expenditure on this account alone of 500*l.* One member, whose wife died since the last anniversary meeting, has received the sum of 25*l.* The total amount paid to members and their families on account of death alone amounted, at the audit in April last, to 2,652*l.* 10*s.*

Not a year elapses without the occurrence of instances showing the advantages of an association like the present. The Committee select the cases of two members recently deceased. Both members were overtaken in the prime of life by severe and unexpected illness. Until their death the Society afforded its assistance. Since then, their infant children, who had lost both parents, and were without friends able to help them, have had advanced for their benefit a sum of 100*l.* One of these members had contributed 26*l.* 5*s.* to the funds; in return he and his family received 97*l.* 19*s.* The other contributed 22*l.* 3*s.*, and received 122*l.* 2*s.*

These examples are a selection from many.

The Committee have received numerous applications for relief from the casual fund, which is employed in assisting law clerks throughout England, whether members or not, and their families, when in distressed circumstances, by gifts of money. To members requiring temporary pecuniary aid in sudden and pressing emergency, assistance is also afforded out of this fund by way of loan repayable without interest. 45 applications for gifts have been made by non-members and the widows of non-members.

The circumstances and character of these applicants were carefully inquired into, and 37 found eligible and deserving were relieved. The remaining applications were rejected, the applicants being ineligible. Five applications for the same assistance have been made by members not in a situation to repay it, and three applications from the widows of deceased members. It was immediately granted; and other members who merely required assistance for a short period have received it by way of loan. In meeting these claims, 373*l.* 14*s.* has been expended. The gross sum thus disbursed amounts to 2,659*l.* 13*s.*

The Committee report with deep regret the exclusion of one member who attempted to impose upon the Society. His offence was clearly proved, and the members, after mature consideration, deeming him unworthy of longer membership, unanimously expelled him.

The receipts of the year on account of the

general fund have amounted to 1,962*l.* 6*s.* 2*d.* Of this sum, 1,313*l.* 17*s.* 6*d.* has been expended.

The capital at the audit in April last amounted to 10,329*l.* 2*s.* 9*d.*, of which 10,128*l.* 5*s.* 6*d.* had been invested with the Commissioners for the reduction of the National Debt. The addition of the half-yearly interest due on the 20th of May last, made the total amount of invested capital on that day 10,320*l.* 5*s.* 8*d.* This fund is charged with the payment of all the fixed benefits, and out of the interest of the invested capital must ultimately be paid the allowances made for life to the superannuated members. The Committee regret that the heavy outlay of the past year, occasioned by the unusually numerous calls upon the funds, has prevented any considerable addition to the invested capital. In the preceding year a sum of 900*l.*, exclusive of interest, was added, in that just passed only 130*l.*

The condition of the casual fund is more favourable. In April, 1847, the balance in hand only amounted to 48*l.* 10*s.* 8*d.* The receipts for the year have been 424*l.* 19*s.* 6*d.*, out of which 373*l.* 14*s.* has been expended, which left a balance in favour of the Society in April last of 103*l.* 8*s.* 2*d.*

Notwithstanding the increased claims upon the funds, the Committee have much pleasure in stating, that there has been no falling off in the members' contributions, which during the year have amounted to 1,219*l.* 3*s.*

The Committee announce with pleasure the receipt of applications from members of the profession in Manchester and Dublin, for information necessary to enable them to establish similar institutions there for their clerks. In Manchester, a preliminary meeting for the purpose has already been held.

The total amount of relief granted by the Society during the year has been 1,351*l.* 14*s.*, exceeding the contributions of the members by 132*l.* 11*s.*; and the total amount since its institution has amounted to nearly 6,400*l.*

The Committee cannot conclude without acknowledging the great obligations the Society is under to all branches of the profession for their continued countenance and support. Without that support the benefits afforded must be of a less liberal character, and they could not, in a pecuniary point of view, be placed within the reach of every law clerk, as they now are, nor could the present capital towards which so many look as the means of ensuring them from a state of dependence or poverty in old age, have been obtained. The Committee trust that the Society will always merit a continuance of that support, feeling assured that so long as it does so it will be received.

HARRY G. ROGERS, *Secretary.*

Freemasons' Tavern, June 28, 1848.

TITHE COMMISSIONERS' REPORT.

COPYHOLD FINES UNDER BUILDING LEASES.

Tithe Commission Office, July 8, 1848.

SIR,—It is our duty to report to you the progress of the commutation of the tithes in England and Wales to the close of the year 1847.

We have received notices that voluntary proceedings have commenced in 9,631 tithe districts; of these notices four were received during the year 1847.

We have received 7,053 agreements, and confirmed 6,753; of these nine have been received and four confirmed during the year 1847.

6,424 notices for making awards have been issued, of which 352 were issued during the year 1847.

We have received 4,847 drafts of compulsory awards, and confirmed 4,332; of these 377 have been received, and 454 have been confirmed, during the year 1847.

We have received 10,173 apportionments, and confirmed 9,860; and of these 608 have been received, and 598 confirmed, during the year 1847.

In 11,085 tithe districts, as will be seen from the above statement, the rent-charges to be hereafter paid have been finally established by confirmed agreements or confirmed awards.

We have in our possession agreements and drafts of awards as yet unconfirmed which will include 815 additional tithe districts, and make a total, when completed, of 11,900 districts in which the tithes will have been computed.

299 altered apportionments were made by the Tithe Commissioners up to the 31st Dec. 1847, of which 212 were confirmed.

At that date exchanges of glebe lands were effected in 169 places, and 51 such exchanges were in progress.

At the close of 1847 we had confirmed 8,260 distinct mergers of tithe. A considerable body of tithe had also been merged by parochial agreements.

We have to report the assurance which we have happily been able to give in all our former reports, that the processes of commutation are going on, on the whole, tranquilly and satisfactorily.

We have adverted in our four former reports to the state of the law, under what is called Lord Tenterden's Act.

Although the law is not yet formally declared, an approach to a decision has taken place: that is, the Barons of the Exchequer have given a certificate of the opinion of their Court on a case submitted to it by the Lord Chancellor; on that certificate we have thought it best to proceed at once without waiting for its ultimate confirmation.

Some inconvenience may, perhaps, result from this, but we think it obvious that much more intolerable inconvenience would be caused from our delaying still further our decisions.

We have, &c.

(Signed)

T. WENTWORTH BULLER.
WM. BLAMIRE.
RICHARD JONES.

To the Right Hon. Sir Geo. Grey,
Bart. &c. &c. &c.

SIR,—I am fortified in my opinion by that of an eminent Chancery practitioner and conveyancer, that the Lord of the Manor is not entitled to fines according to the rack-rent on building leases, and I do not believe that any jury would return a verdict for fines according to the rack rent. The contrary would be manifest and gross injustice, if not legal robbery.

I hope your correspondent will oblige the profession by stating the manors in which fines have been paid on the rack-rent principle.

I believe the Bishop of London has lately demanded and been paid a years' rack-rent for the enfranchisement of copyholds held under the See, at a fine equal to the yearly quit rent—a few pence: this is an enormous consideration.

Your correspondent states, that the copyholders of the Duchies of Lancaster and Cornwall can obtain enfranchisement. This is not the fact, they not only peremptorily refuse to enfranchise, but pertinaciously insisted on the insertion of a clause in the general enfranchisement bill, excluding those manors from its operation.

I consider the principle acted on in the manors belonging to the See of Canterbury, under the 6 Geo. 4, c. 47, the fair and honest one, and which admits the right of the lord to an increased fine, according to the value during the last 21 years of the building lease.

CIVIS.

In reference to several letters which have appeared in recent numbers, I would observe that any lord of a manor who insists on the payment of fines under building leases, insists in effect on confiscation of the copyhold estate, for he utterly deprives the copyholder of any beneficial interest.

Assuming the ground-rent to be 20*l.* a year, and the rack-rent 200*l.*, a fine of 400*l.*, two years' value, equal to 20 years' full rent, is really monstrous.

Fines must be reasonable, but this is neither reasonable nor just, but extortionate in the extreme; and I have no hesitation in stating that the best course in such cases is, to insist on admission, tendering the fees and stamps, and, if necessary, compel it by an application to the Court of Queen's Bench, and leave the lord to his action, first tendering the two years' ground-rent and somewhat more, and I feel confident that no jury will be found who would bring in a verdict for the rack rent.

No, no!—No lord, however exalted his station, dare to demand such exorbitant fines.

Of course, fines cannot be demanded until after admission.

A MEMBER OF THE PROFESSION.

STATE OF LAW BILLS IN PARLIAMENT.

WE have elsewhere observed on several of the Bills before Parliament: viz.—the *Charitable Trusts Bill*,—the *Copyhold Enfranchisement Bill*, (See pp. 277-280; and here add the state of other measures more or less affecting the profession.

The *Bankruptcy Consolidation and Amendment Bill* has been postponed for this Session, and referred to a Select Committee of the House of Lords, to take evidence and report on the subject.

The *Chancery Fees Bill* has just been printed, enabling the Lord Chancellor to make orders for the collection of fees by means of stamps, an account of which is to be kept and paid by the Commissioners of Stamps to the Suitors' Fee Fund at the Bank of England.

The Bills for the *Administration of Justice* out of Sessions, and on Summary Convictions, and for the Protection of Justices of the Peace, will probably pass, as also the *Public Health Bill*.

The extension of the Remedies for *Payment of Debts out of Real Estate* will also, it seems, be completed, as well as the *Irish Incumbered Estates Bill*.

The Bill for making *Life Policies of Insurance* assignable at Law has been postponed. The *Law of Marriage Bill* also stands over; and so, we believe, will the Remedies against the *Hundred Bill*.

The Bill for inquiring into *Bribery* at Elections may be expected to pass, and perhaps the payment of *Electors' Rates Bill*; also the *Parliamentary Proceedings Adjournment Bill*.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Ex parte Stevens. May 15, 1848.

PAYMENT OF MONEY OUT OF COURT.

Authority on which the Court will allow the solicitor of a party to receive small sums exceeding 10l.

Mr. *Craig* applied to have a small sum of money, not exceeding 10l., paid out of Court to Mr. *Sterne*, the solicitor of a party to the cause, upon a petition signed by the party, but without any affidavit verifying the signature.

Lord *Langdale* said, that he could not act on that authority, but that he would act upon a simple authority in writing empowering the solicitor to receive the money, with an affidavit as to the handwriting.

Vice-Chancellor of England.

Ex parte the Eastern Counties Railway.
June 9, 1848.

COMPLETION OF PURCHASE.—RETURN OF DEPOSIT MONEY.—SERVICE OF PETITION ON VENDOR.

Where a petition is presented by a railway company for return of deposit money in completion of a purchase, it is not necessary to serve the vendor with the petition, provided there is a proper affidavit as to the completion of the purchase and the payment of the costs attending it, as directed by the act of parliament.

THE Eastern Counties Railway Company purchased land in Norfolk from a Mr. *Brown*, and 1,000l. was paid into Court by them by way of deposit. The land was subsequently purchased for 280l., and the conveyance executed, and the money paid.

Mr. *Cotterill* now appeared on petition, praying that the 1,000l. might be ordered to be returned to the company. The vendor had not been served with the petition, but there was an affidavit by the solicitor to the railway company, that the purchase had been com-

pleted, and the proper costs directed by the act paid.

The *Vice-Chancellor* said, the order might be taken; there was no necessity, under the circumstances, to serve the vendor.

Vice-Chancellor Knight Bruce.

In re Elliott, Ex parte the South Devon Railway Company. Monday, Jan. 31, 1848.

AWARD.—MOTION TO SET ASIDE.

A railway company requiring land, the vendor appointed A. as his arbitrator. C. was appointed by the company, but he had before made an offer on behalf of the Company to the vendor for the land. D. was chosen umpire. The vendor afterwards discovered that his arbitrator and the umpire were surveyors employed, and one of them a shareholder, in a company materially interested in the success of the company treating with the vendor. On a motion to set aside the award, Held, that there were not sufficient judicial grounds for so doing.

THIS case came on upon a motion to make absolute a rule nisi for setting aside an award. The facts were as follow:—The South Devon Railway Company, requiring land belonging to Mr. *Elliott* for the purposes of their line, gave the regular notices under the Lands Clauses Consolidation Act. The land consisted of 2 roods and 10 perches, and Mr. *Elliott* demanded 3,675l. 6s., which sum the company refused to pay. Thereupon arbitrators were duly appointed, and they appointed an umpire. The latter made his award on the 23rd of Sept., 1847, by which he awarded the sum of 1,800l. as the value of the fee simple of the land, and the sum of 148l. as compensation for damages caused by the severance of the land from other lands of Mr. *Elliott*, or by otherwise injuriously affecting such other lands. By the award it was also stated that 2,000l. had, before the arbitration, been offered by the company for the piece of land in question. As

the company did not require the whole of the piece of land contained in the notices, it was arranged that the arbitrators and umpire should make a valuation, and state on a separate paper what should be deducted from the sum awarded in respect of the land which Mr. Elliott should retain. The arbitrators and umpire accordingly, in a separate paper, signed by them, valued part of the said piece of land for re-sale by the company at 3s. per square foot, the company having before, by their agent (Mr. Dymond) offered for the purchase of the whole land from Mr. Elliott half the said sum. On the 24th of January, an order nisi to set aside the award was obtained on behalf of Elliott, upon the allegations that the arbitrators and umpire respectively were not indifferent and disinterested persons with respect to the subject of the said award; 2ndly, that the proceedings of the said arbitrators and umpire were irregular in respect of the matters stated in the affidavits thereafter mentioned; and 3rdly, that the said award was inconsistent with a certain memorandum in writing under the hands of the said arbitrators and umpire, delivered by them together with the said award, and bearing even date therewith, and was thereby shown to be erroneous. It appeared that Mr. Dymond, as agent for the company offered Mr. Elliott 1s. 6d. per square foot for the land, and afterwards, when the arbitration was agreed upon, he was appointed arbitrator on behalf of the company, and Mr. Elliott appointed as his arbitrator Mr. Driver. This gentleman, Mr. Elliott alleged by his affidavit, he had since discovered to be a shareholder in, and surveyor employed by, the Great Western Railway Company, which company was materially interested in the South Devon Railway and the Bristol and Exeter Railway, the three being connected and forming one continuous line of the same breadth of gauge. From the affidavit of Mr. Elliott it also appeared that he had since the appointment discovered that Mr. Marmont, who had been chosen umpire by Mr. Driver from a list furnished by Mr. Dymond, was a surveyor employed by the Great Western Railway Company. It was also alleged that Mr. Marmont had interfered in the reference before he was called upon to act as umpire. Mr. Elliott's counsel, before the reference was entered upon, protested against Mr. Dymond's acting as arbitrator.

Mr. Russell and Mr. Roundell Palmer, in support of the rule.

Mr. Kenyon Parker and Mr. T. Stevens showed cause on behalf of the company against the rule for setting aside the award.

His Honour said, that the circumstance of the association of the umpire in the inquiry before his time of acting began, amounted to nothing in this case. There might be cases—there might be circumstances—in which that might be material, but nothing material arose here in that respect. With respect to the document contemporaneous with the award, that might be valid or invalid, might be worth something or nothing; upon that he gave no

opinion. He did not think that there were grounds on which it could safely or properly be said the award ought to fail by reason of the existence of that document, or by reason of anything shown by it, or which might be inferred from it. In his judgment Mr. Dymond ought not to have been selected as arbitrator, considering his connection with the company in question; but it appeared to him that if the appointment had been meant to be objected to, and that objection insisted upon, a different course should have been taken. The course that appeared from the evidence to have been taken, in his Honour's opinion, justified the company in saying that it amounted to a waiver, and he did say so, and had now to give effect to that opinion. With regard to Mr. Marmont, his Honour said that he was not clear that he ought to have been appointed an umpire in point of delicacy, considering his connections with the Great Western Railway were known; but his connection was far from being only that of a surveyor for a company, holding many shares in, and having a considerable interest in the company in question. But he feared he should be going too far—he was satisfied, indeed, that he should be going too far—to set aside the award upon that ground merely. Although, therefore, there were some things which he should be better satisfied to see otherwise, yet he thought there were not judicial grounds on which he could set aside the award. He thought the award had been saved very narrowly indeed, as far as his judgment was concerned, and no costs should be given on either side.

Queen's Bench.

(Before the Four Judges.)—

Ex parte an Attorney, In re Greaves v. Clifford.

12th July, 1848.

ATTORNEY.—COUNTY COURT.—COSTS.

The 9 & 10 Vict. c. 95, s. 91, prevents an attorney from recovering from his own client, in respect of business done in the County Court, anything beyond what he can recover from the opposite party.

The section applies to everything done by the attorney in that Court, whether preliminary business or otherwise.

THIS was a rule calling on the plaintiff to show cause why the taxation of costs by the Master should not be reviewed. The facts of the case were these:—The plaintiff desired to commence proceedings in one of the County Courts, and applied to the attorney to act for him in that business. The attorney did so, and when the bill was sent in it was submitted to taxation. On the parties going before the Master, it was suggested to him that the sole employment of the attorney was in a suit in the County Court, on which the Master refused to allow anything more than the fees allowed in the County Court Act, 9 & 10 Vict.

c. 95, s. 91. This rule was then obtained, on the ground that that act did not apply to cases as between attorney and client, but only to cases as between party and party.

Mr. *Petersdorff* showed cause against the rule. The statute was intended to apply to all cases whatever. The words of the 91st section are positive "that no attorney shall be enabled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than 40s., or to have or recover more than 10s. for his fees and costs, unless the debt or damage claimed shall be more than 5*l.*, or more than 15s., in any case within the summary jurisdiction given by this act." There is not one single word restricting any of these enactments to the costs payable as between party and party. The section is in the most general and most comprehensive terms. The course of the decisions with respect to all other acts relating to costs is in support of this argument. In all other acts the words have been "shall not recover or pay." The framer of this section must have had in view the language of those acts, and in order to avoid the distinction to which that language had given rise, and in order to make the provisions of this act applicable to all parties whatever, he has used the form, that "no attorney shall have or recover." It was not intended or wished that attorneys should attend these Courts, and this section must be looked upon as a parliamentary limitation on their rights. It is clear that without a special contract no fee larger than that stated in the statute can be recovered, and there seems good reason for contending that even a special contract to pay a larger fee would be illegal. No special agreement for such a purpose could be maintained in the face of the express prohibitory words of the statute. The Master was right in his view of the meaning of the legislature, and the rule must be discharged.

Mr. *Creasy*, in support of the rule. The section is not conclusive so as to prevent the Master from exercising any discretion in the matter. All the parts of the 91st section must be read together, and then it will be clear that the section merely refers to what may be recovered by one party from his opponent. After the words quoted on the other side come these words, "And in no case shall any fee exceeding the sum of 1*l.* 3*s.* 6*d.*, be allowed for employing a barrister as counsel in the case; and the expense of employing a barrister or an attorney, either by the plaintiff or the defendant, shall not be allowed on taxation of costs, in the case of a plaintiff where less than 5*l.* is recovered, or in the case of a defendant where less than 5*l.* is claimed, or in any case unless by order of the judge." In all these provisions it is clear that the allowance has reference to the adjudication and not to the preliminary proceedings, and that by the adjudication is to be determined, the question whether anything shall be allowed for an attorney or a barrister at all, and if allowed, then the sum is not to exceed that which is specified in the act. This

view of the matter is warranted by reference to the preceding part of the section when the phrase is "appearing or acting"—a phrase that plainly applies to the hearing before the Court, and not to any other period of the cause. The legislature never could have intended that a party should not have the advice of an attorney, so as to enable him to bring his complaint before the Court in a proper manner, and thus to save him from the liability of defeat. Is it reasonable to say that the very small sum mentioned in the act is to be the maximum that can be recovered for all the trouble which an attorney may have in collecting and arranging complicated evidence. It is not reasonable to say so. The sum mentioned by the act was deemed a sufficient compensation for appearing at the hearing, and the enactment was intended to apply to the hearing and nothing more. [Mr. Justice *Patteson*. What is the meaning of the phrase "no attorney shall be entitled to have or recover." That phrase must be referred to another, "unless by order of the judge," which shows that the former phrase is to be applied as between party and party only, since he can then say whether in his opinion the party succeeding ought to charge his opponent with the cost of legal advice. The County Court Judge may form a fair opinion whether the plaintiff or defendant should pay costs to the opponent, but it is impossible for him to know whether the client did not receive infinite benefit from being represented by an attorney, thus saving himself from the necessity of losing his own time and trouble, perhaps more valuable than the sum in dispute, by a personal attendance on the Court. [Mr. Justice *Patteson*. The act uses proper words in the case of the barrister: as he cannot maintain an action, the words are "not be allowed." Why did not the act say the same thing in the case of an attorney, if its provisions were meant to be restrained to the instances of party and party?] The distinction in phrase in that respect was only made because of the circumstances of the barrister's fee being paid in the first instance by the attorney, and the phrase "allowed" was properly applicable to money thus previously paid. Further, this case has not been expressly provided for by the rules of these Courts, nor by the statute itself, and then the 88th section applies. By that section it is declared, "that in any case not expressly provided for herein or by the rules, the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several Courts." It is confidently submitted that the statute does not expressly apply to the case of attorney and client, that the rules made by the judges under the 88th section do not apply to such a case; that the legislature never could have intended to prohibit a party from having the benefit of legal assistance, either for the purpose of advice, or for that of saving himself from the necessity of a personal attendance on the Court, and that, consequently, the Master took an erroneous

view of the statute, and this rule must be made absolute.

Cur. ad. vult.

July 12.—Mr. Justice *Patteson* delivered the judgment of the Court. This was an application to review the taxation of the Master. The bill taxed was that of an attorney against his own client, for business done in the County Court. The Master had only allowed costs on the scale given by the 9 & 10 Vict. c. 95, s. 91. Two objections were raised to this taxation; first, that the clause did not apply to a case of attorney and client, but only to a case of party and party; and secondly, that it does not apply to business preliminary to the hearing of the case. The words of the section are these, (his Lordship read them.) We are of opinion that the legislature did not intend to make any distinction between the attorney when acting for his own client and the attorney of the opposite party. The costs intended to be allowed between party and party are such as the attorney is to recover from his own client. This was meant as a check on the employment of an attorney, and we think that the latter clause was meant as a further check of the same kind. We are of opinion that the phrase "acting on behalf of any person" in the County Court, includes everything done by the attorney in that Court, before or after the hearing.

Rule discharged.

Court of Exchequer.

Faulkner v. Lowe. June 12, 1848.

COVENANT BY A. TO PAY TO A. WITH OTHER JOINTLY.

H. L. borrowed 1,600l., and covenanted to pay the plaintiff, one R. L., and himself, the defendant H. L., jointly the said sum. Held, that the covenant was void.

DECLARATION in covenant. Oyer craved and demurrer.

T. Jones submitted, that the covenant being to pay the three jointly, amounted to a covenant by the defendant to pay himself, which might be satisfied by passing the money from one hand to another, and was therefore absurd and bad.

Martin, (with him *Henderson*.) *contra*.

Per Curiam. The covenant is clearly bad.

Judgment for the defendant.

Lees v. Winterbottom. April 20, and May 6, 1848.

PRACTICE.—REJOINING GRATIS.—MAKING UP RECORD.

Rejoining gratis does not mean that the party is to rejoin in 24 hours.

Where a defendant is under terms to rejoin gratis and does not, the proper course is to sign judgment.

A plaintiff cannot, in order to make up the record in time for the assizes, add a rejoinder for the defendant, even though it

should be in effect the same as that subsequently delivered by the defendant.

IN this case the action had been commenced on the 25th February, and the declaration in *assumpsit* was delivered on the 6th March. Time to plead was obtained until the 20th March, on which day the pleas of *non assumpsit* and set-off were delivered. The plaintiff replied by a *similiter* to the first plea, and the Statute of Limitations to the set-off. This replication was delivered on the 26th March, when a rejoinder was demanded. The defendant, who was under terms to rejoin gratis, delivered his rejoinder shortly before 9 o'clock in the evening of the 29th March, taking the four days to rejoin. The 29th March was the commission day at Chester, when the action was set down for trial. It being necessary that the record should have been made up and passed by 3 o'clock of that day, the plaintiff, with a view to entering the cause in time, added a rejoinder to the record to the same effect, but not in the same words as the rejoinder delivered by the defendant. There was a notice of trial on the back of the issue delivered on the commission day. The defendant did not appear at the trial, and the plaintiff had a verdict.

Martin applied, under these circumstances, and obtained a rule to show cause why the *non assumpsit* record and the issue should not be set aside with costs.

Welsby, with him *Hoggins*, showed cause against the rule. He must admit the record was passed before the issue was completed; no inconvenience, however, arose to the defendant, nor was he in any way prejudiced. The defendant was under terms to receive such notice of trial as the plaintiff could give. [*Parke*, B. But in this case you could give no notice at all, and the defendant was entitled to some notice.] On the delivery of the replication a rejoinder was demanded, and the defendant ought to have rejoined within 24 hours, he being under terms to rejoin gratis, but the defendant said he had four days to rejoin, and that he should take the whole of the time. [*Platt*, B. You cannot take advantage of that now, because if that was so, you should have signed judgment.] Rejoining gratis means rejoining within 24 hours, and that without a rule to rejoin. [*Parke*, B. That is not so.] It is laid down in *Lush's Practice* that, although the import of the condition of rejoining gratis does not appear to be well defined, "thus much is certain, that it means rejoining without the usual four days' rule, and within 24 hours after demand. [*Rolfe*, B., referred to *Adkins v. Anderson*, 10 M. & W. 12.] In this case they did not deliver the rejoinder until just before 9 o'clock of the evening of the 29th. [*Parke*, B. Then you were driven over the assizes.] But a rejoinder was added, and the record made up within the time. [*Rolfe*, B. What you call the record was not the record.] It was substantially the same. [*Rolfe*, B. It was not a transcript of the proceedings. *Parke*, B. The only way of getting over this

rule would be to show that they were under such terms as would authorize you to do this either expressly or by implication.]

Per Curiam. Rule absolute.

Court of Bankruptcy.

In re Conquest, Ex parte Butler. 22nd July, 1848.

ATTORNEY'S PRIVILEGE AS WITNESS.—
PRACTICE.—COSTS.

An attorney cannot refuse to state when notice of an act of bankruptcy came to his knowledge, on the ground of professional privilege.

Notice of an act of bankruptcy is a matter concerning the estate of a bankrupt, and of an act of bankruptcy by him committed, within the 6 Geo. 4, c. 16, s. 34.

THE bankrupt, John Conquest, who was made bankrupt as a money scrivener, shortly before his bankruptcy was sued by the Peckham Building Investment Company for a debt, and consented to a judge's order to pay the debt and costs by instalments, and upon default of payment, that the plaintiffs should be at liberty to sign judgment. Mr. Butler, of Tooley Street, was the attorney for the Peckham Building Investment Company. On the 18th May last, Conquest committed an act of bankruptcy by absenting himself from his place of business to avoid his creditors, and failed to pay an instalment of this debt. On the 2nd day of June, Messrs. Phillips & Voss, of Size Lane, gave notice in writing to Mr. Butler, as the attorney for the Peckham Building Investment Company, that Conquest had committed an act of Bankruptcy; which notice was left at the office of Mr. Butler with one of his clerks. On the following morning, (3rd June,) at the opening of the office, judgment was signed against Conquest by Mr. Butler, on behalf of the Peckham Building Company, pursuant to the judge's order, and in the course of the same day a writ of *fi. fa.* was issued and executed upon the goods of Conquest. The fiat was issued on the 14th day of June, and the assignees subsequently brought an action of trover against the sheriff to recover the value of the goods seized under the execution, upon which an issue was ordered under the Interpleader Act, the assignees and the execution creditors being parties.

Under these circumstances, a summons was issued by Mr. Commissioner Shepherd, under the stat. 6 G. 4, c. 16, s. 31, addressed to Mr. Butler, and upon his attendance he was examined by the counsel for the assignees, and, amongst other questions, asked when the notice of the act of bankruptcy came to his knowledge? Mr. Butler insisted that he was not bound to answer this question, the Commissioner was of opinion that Mr. Butler was bound to answer the question; and, upon his still declining to do so, the Commissioner referred the matter to a Subdivision Court, to be held on the 22nd day of July, at 11 o'clock.

The Subdivision Court consisted of Commissioners Fonblanque, Fane, and Shepherd.

The Court intimated that the examination must commence *de novo*, and the questions previously put to Mr. Butler, and which he had answered, were repeated, and again answered. The question was then repeated,—“When did you receive the notice purporting to be a notice of an act of bankruptcy by John Conquest?”

Mr. Butler submitted, that he was not bound to answer the question upon two grounds:—1st, He had received the notice in his professional capacity, and his answer might compromise the interest of his clients, against whom an action was actually depending; 2ndly, The 6 Geo. 4, c. 16, s. 34, only entitled the Commissioners to examine “concerning the person, trade, dealings, or estate of such bankrupt, or concerning any act or acts of bankruptcy by such bankrupt committed.” And he contended that the question now put did not concern the person, trade, dealings, or estate of the bankrupt, or any act of bankruptcy by him committed.

The Court (without hearing the counsel for the assignees) intimated, that they had come to the unanimous determination that the witness was bound to answer the question put to him. The professional privilege of an attorney was confined to information received by him from his client in his character of an attorney, and not to transactions with third parties. The objection on the ground of privilege was therefore untenable. Neither could the second ground of objection be maintained, for it was quite obvious the question put to the witness concerned the estate of the bankrupt, and it also concerned the act of bankruptcy by him committed.

Mr. Butler expressed his willingness to submit, without more, to the decision of the Court, and the former question having been repeated in the same terms, he replied, that the notice of the act of bankruptcy had come to his knowledge on the same day on which he signed judgment (the 3rd June), but before judgment was actually signed.

The Counsel for the assignees then applied to the Court to order that Mr. Butler should pay the costs of the Subdivision Court, and also of the meeting before Mr. Commissioner Shepherd.

Mr. Butler submitted, that in taking the opinion of the Court, he had only done his duty to his client, whose interest was materially affected by the answer he had now given. As the Commissioner thought the point so doubtful as to require the opinion of a Subdivision Court, it would be hard to make him pay costs.

Mr. Commissioner *Fonblanque* regretted that the question of costs had been raised, but as the costs were applied for, the Court was bound to see that the bankrupt's estate was not unnecessarily charged. The witness was dissatisfied with the Commissioner's decision, and by declining to answer had produced an expense.

The question was, on whom the expense should fall—the creditors, who were entitled to the witness's evidence, or the witness who had refused to answer? The Court was of opinion

the witness must pay the costs of the Subdivision Court, but not of the meeting before Mr. Commissioner Shepherd. Order accordingly.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

MAGISTRATES' and POOR LAW CASES.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

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Bankruptcy, p. 213.

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Courts of Common Law :

Evidence, p. 272.]

ACTION AGAINST MAGISTRATE.

1. *Notice*.—43 Geo. 3, c. 99, s. 70.—*A.* was committed to prison by *B.*, under the 42 Geo. 3, c. 99, on the 8th September, 1845, and was discharged on the 8th of February, 1846, having been in prison 154 days. Section 70 enacts, that for anything done in pursuance of the act an action must be brought within six calendar months next after the fact committed, and requires notice of action to be given, stating the cause or causes of action. A notice of action was given, stating the plaintiff was imprisoned for 150 days, and the action was commenced on the 6th August, 1846.

Held, that *A.* was bound by the allegation as to time in his notice, and inasmuch as it did not appear that the action was commenced within six calendar months after the expiration of the 150 days, he was non-suited.—*Sutton v. Swanwick and another*, 35 L. O. 412.

2. *Invalid conviction*.—9 Geo. 4, c. 31, s. 27.—Where the conviction of the plaintiff for an assault before two justices under the 9 Geo. 4, c. 31, s. 27, directed that the fine imposed by such justices should be paid by the plaintiff to the treasurer of the county, and in default of payment, that the plaintiff should be imprisoned for two calendar months, &c. : *Held*, bad, and that the said justices were liable to an action of trespass for false imprisonment at the suit of the plaintiff who had been arrested under the conviction. *Chaddock v. Wilbraham and another*, 35 L. O. 592.

APPEAL.

1. *General ground followed by specific ones*.—*Child*.—*Removal to maiden settlement*.—The grounds of appeal against an order removing a widow with her children, to her maiden settlement, were:—1. That the order and examinations were bad and insufficient on the face thereof respectively. 2. That there was no legal evidence of chargeability, and that the examinations do not prove relief. 3. That no legal evidence of relief was given. 4 & 5. That the examinations do not show any proper search for the settlement of the pauper's late husband. 6. That the justices had not jurisdiction to remove without evidence, that the husband had no settlement, or none that could be discovered; and that the order was made without such evidence. 7. That the widow could have given information as to his settlement. 8. That the order describes the eldest son as legitimate, whereas the evidence on which it was made, shows him to be a bastard : *Held*, that the general ground of appeal being followed by specific ones, alleging defects in the examinations, the appellant could not, under the general ground, object to the examinations for a cause particularly specified; as, that they did not show a legal hiring and service, (on which the widow's settlement depended); or that the jurat was imperfect.

The order, dated Aug. 26, 1844, purported to adjudicate on the settlement of "*A. B.*, widow, and four of her children, viz., Henry, aged 9½ years, James," &c. By the examinations it appeared that Henry was illegitimate, and of the age mentioned : *Held*, that the word "children" standing alone, meant legitimate children; and that Henry was therefore misdescribed, and the order, as to him, bad.

The widow, in her examination, said:—"I never knew or saw any relation of my late husband; nor can I tell to what parish or place he belonged." Nothing further appeared as to his settlement : *Held*, that the widow was removable to her maiden settlement, without further inquiries by the respondents as to the settlement of her husband. *Reg. v. Churchwardens of Birmingham*, 8 Q. B. 410.

Cases cited in the judgment : *Reg. v. Yelvertoft*, 6 Q. B. 801; *Rex v. Harberton*, 13 East, 311; *Rex v. St. Mary Beverley*, 1 B. & Ad. 205.

2. *Sending copy of order*.—*New objection*.—On objection, stated in grounds of appeal, that "no copy of an order of removal has been sent," appellants cannot allege that the copy

sent is defective and inaccurate in not setting out the name of one of the paupers.

The Court will not allow an objection to an order of removal for defects on the face to be taken on arguing the rule to quash the order of sessions on a case reserved, if the objection be not stated in the case, although the rule to quash was moved for in open Court, and the objection then stated and notice of the objection was given to the respondents. *Reg. v. Inhabitants of St. Anne, Westminster*, 8 Q. B. 561.

Case cited in the judgment: *Rex v. Guildford*, 2 Chitt. Rep. 284.

3. *Removal of Poor.*—Upon appeal against an order of removal of a female pauper of the name of M. S., it was objected by the appellants that there was nothing on the face of the examinations to show that A. S., whom the pauper in her examination described as her husband, was the same person as A. S., who, in another part of the examinations, was described as having gained a settlement in the appellant parish. The respondents contended that this objection could not be taken under the following grounds of appeal:—"Because the said order of removal, and the notice of chargeability, and the examinations whereon the said order is granted, are respectively defective and bad on the face thereof, and the said examinations contain no sufficient legal evidence of the said pauper being settled in our parish of C., or of their having come to settle in or being chargeable to your said township of L. and L.; and because no information of complaint appears to have been made to the said justices from the overseers of your township of L. and L., requiring them to make the said removal." The sessions, however, decided that it could, and that the objection was fatal, and accordingly quashed the order: *Held*, that the grounds of appeal sufficiently raised the objection, and that the justices having decided on it, this Court would not interfere with their decision. *Reg. v. Justices of Staffordshire*, 4 D. & L. 624.

4. *Removal.—Time.*—A parish served with an order of removal, notice of chargeability, and examinations, under stat. 4 & 5 W. 4, c. 76, s. 79, may either appeal to the first practicable sessions after such service, although no actual removal has taken place, or wait till there be an actual removal, and then appeal. *Reg. v. Recorder of Leeds*, 8 Q. B. 623.

Cases cited in the judgment: *Reg. v. Justices of Salop*, 6 Dowl. P. C. 28; *Reg. v. Justices, &c. of Yorkshire*, 2 D. & L. 488; *Reg. v. Justices of Middlesex*, 9 Dowl. P. C. 169, 170.

5. *Removal of poor.*—Order of removal of a man, his wife, and children, in March, 1846. In the April following, the man alone was removed, (the execution of the order as to the wife and children not having been suspended,) and notice of appeal given for the next Midsummer Sessions, but not entered or heard in consequence of negotiation between the contending townships. The pauper having re-

turned to the removing parish, was removed a second time, together with his wife and children, on the 23rd of Dec., under the same order. The appellant township then appealed to the Epiphany Sessions, 1847, against the order: *Held*, that the appeal was too late. *Reg. v. Justices of Durham*, 5 D. & L. 82.

6. *Special case.—Certiorari.*—It appeared on affidavit, that the Court of appeal, constituted by 7 & 8 G. 4, c. 53, s. 82, suspended its judgment, and stated a special case for the opinion of the Court of Exchequer, under section 84: *Held*, that no *certiorari* was requisite to enable that Court to give its direction on the special case. *Reg. v. Gumble*, 16 M. & W. 384.

7. 9 Geo. 4, c. 61, s. 27.—The statute 9 Geo. 4, c. 61, s. 27, gives to any person aggrieved a right of appeal to "the next general or quarter sessions of the peace holden for the county or place, &c., unless such session shall be holden within twelve days next after such act shall have been done, and in that case to the next subsequent session holden as aforesaid, and not afterwards." An appeal against a refusal of justices to grant a license was heard at the sessions specified by the statute, and was dismissed with costs; but in order that the amount of costs might be ascertained the court adjourned the appeal to the following sessions.

Held, that the statute had specified the particular sessions at which the appeal should be heard, and that such sessions had no power of adjourning the appeal to the next sessions for the purpose of ascertaining the amount of costs. *The Queen v. William Belton*, 35 L. O. 460.

See *Mandamus*, 1; *Removal: Settlement*.

APPRENTICE.

1. *Allowance of indenture.—Jurisdiction.*—An indenture for binding a parish apprentice purported to be "in execution of an order under the hands of G. B. and R. P." justices "acting in and for the hundred of Teignbridge, within the county of Devon. On the back of the indenture was the order for binding, purporting to be made by "G. B. and R. P., justices of the peace acting in and for the said county," (Devon). At the foot of the indenture followed an allowance in the words,—"We whose names are hereunder written, justices of the peace, (whereof one is of the quorum,) do consent to allow," &c. "G. B., R. P." The order and indenture were both dated on the same day: *Held*, that, although the allowance did not contain the words "justices of the peace acting in and for the county of Devon," yet it sufficiently appeared from the whole of the documents that the allowing justices were such, and were the same who made the order for binding.

In stat. 56 G. 3, c. 139, s. 1, the words, "Such justices shall sign the allowance of such indenture," mean the same justices who made the order for binding. *Reg. v. Inhabitants of Ashbarton*, 8 Q. B. 871.

2. 56 Geo. 3, c. 139.—*Removal.*—At the trial of an appeal, the respondents, in order to

support a settlement by apprenticeship as a parish apprentice, proved an indenture produced from the parish chest of a parish in the county of York, executed by the master, who lived in a parish in the county of Lancaster, and allowed by two justices of the county of York. Proof was given that the pauper served his master as an apprentice for three years. The sessions held that there was not sufficient evidence to raise a presumption of the allowance of the indenture by justices of the county of Lancaster, pursuant to the statute 56 Geo. 3, c. 139, and quashed the order.

Held, that the session had come to a right conclusion. *The Queen v. The Inhabitants of Macclesfield*, 35 L. O. 484.

See *Examination*, 1.

ASSESSMENT ACT.

See *Mandamus*, 3.

CERTIORARI.

1. *What order is removable.—Abolition of fees of defendants in misdemeanor.*—A table of the fees and allowances to be taken by the clerk of the peace for the county of S. was, in 1826, duly settled and approved by the sessions, and confirmed by the judges of assize, under stat. 57 G. 3, c. 91. It authorized the taking of traverse and other fees from defendants in misdemeanor, and was acted upon till 1844, when the sessions made an order that no officer of the Court should thereafter take or demand any fee or payment from any defendant in misdemeanor. Stat. 8 & 9 Vict. c. 114, was afterwards passed, which prohibits the taking of certain fees from defendants who are acquitted or discharged by proclamation.

Held, on motion to quash the above orders, removed by certiorari:

That the order was a judicial proceeding, removable by certiorari.

That the order was illegal, assuming to abolish fees which had been regularly ascertained under stat. 57 G. 3, c. 91.

And that stat. 8 & 9 Vict. c. 114, not having prohibited all such fees, this Court was bound to interfere by quashing the order. *Reg. v. Coles*, 8 Q. B. 76.

2. *New objections.*—Where an order of removal has been confirmed by the sessions, subject to a case reserved, and the original order is thereupon brought up by certiorari, the Court will not notice defects on the face of the order not noticed in the case, although such defects were mentioned in moving for the certiorari. *Reg. v. Inhabitants of Hartpury*, 8 Q. B. 566.

3. *Constables, appointment of.—Petty sessions.—Vestry.*—A certiorari will not lie to bring up a resolution of vestry for the appointment of paid constables under the 5 & 6 Vict. c. 109, s. 18.

Nor the copy of such resolution forwarded to the justices in special sessions, on which they made the appointment.

But it will lie to bring up the appointment itself made by the justices in petty sessions,

when the proceedings in vestry have not been conducted in conformity to the 58 G. 3, c. 69, amended by the 59 G. 3, c. 85, a poll having been demanded and refused, and the resolution being carried by a show of hands.

A certiorari being granted for that purpose, it is competent for the parties moving to show upon affidavit that the irregularity in the proceedings of the vestry was of such a nature as to take away the jurisdiction of the justices. *In re Constables of Hipperholme cum Brighouse*, 5 D. & L. 79.

See *Appeal*, 6; *Pauper Lunatic*, 1.

CHAPEL-RATE.

Inequality.—Order of justices.—Ecclesiastical Court.—A chapel-rate was laid on the land-holders of the chapelry only, exclusively of the holders and occupiers of mills and houses: *Held*, that an occupier of land within the chapelry, who did not object to the rate before the justices when summoned for non-payment, could not question its validity in an action of replevin, after distress on his goods under the justices warrant. A chapel-rate, duly made, but objected to from extrinsic circumstances, can only be questioned in the Ecclesiastical Court.

An order of justices for payment of chapel rate need not state that the proceedings were taken "on oath." *Rumbottom v. Duckworth*, 1 Exch. R. 506.

Case cited in the judgment: *Ormerod v. Chadwick*, 16 M. & W. 367.

CHARGEABILITY.

1. *Stat. 7 & 8 Vict. c. 101, s. 69.—Examinations.—Certificate.—Signature of justices.*—On trial of an appeal against an order of removal, a copy of a certificate was produced in proof of chargeability. It followed the form in sched. (C.) to stat. 7 & 8 Vict. c. 101; and appeared to be duly executed according to sect. 69; and the names of the paupers therein corresponded with the names of the paupers in the order of removal. On it was written a copy of a statement, signed by two justices of the same county, and bearing the same names, with the removing justices, and which declared that the certificate was received by them in evidence on a day named. The day was that of the date of the order of removal. The statement did not show that the certificate was received in the matter of the particular complaint. The examinations stated the chargeability, and did not refer to the certificate: *Held*, that the transmission of the copies of examinations, and copy of the certificate, thus vouched, was sufficient to satisfy the requisites of stat. 4 & 5 W. 4, c. 76, s. 79; and that the copies contained sufficient evidence of the paupers being chargeable and of the chargeability having been proved before the removing justices. *Reg. v. Inhabitants of High Bickington*, 8 Q. B. 889.

2. The statement of the relieving officer of an union, in his examination before removing justices, that he relieved the pauper with money on account of a particular parish in the union,

is no evidence that the pauper was chargeable to the parish. *Reg. v. Inhabitants of Bradford*, 8 Q. B. 571, n.

3. Examination as follows:—"I have lived in the township of P. for some time past, and am now residing in the workhouse in that town, my husband having run away and left me." *Held*, to be some evidence of chargeability to P. *Reg. v. Inhabitants of Manchester*, 8 Q. B. 572, n.

See *Lunatic Pauper*, 2.

CONSTABLE.

See *Certiorari*, 3.

CONVICTION.

Forcible entry and detainer.—In order to justify a conviction by justices under the statutes of 15 Rich. 2, c. 2, and 8 Hen. 6, c. 9, there must be proof before them, as well of an unlawful entry on the premises, as a forcible detainer.

Where a conviction stated that justices had convicted G. A. of forcible detainer upon their own view, and that afterwards a complaint was made to the same justices that the said G. A. forcibly entered the premises, and that notice of such complaint was given to the said G. A., who received the said notice but said nothing, and then went on to allege that the justices received evidence on oath of the unlawful entry.

Held, that the conviction was bad for omitting to show that G. A. had been summoned to answer the charge of the unlawful entry, or that he had had any opportunity afforded him of defending himself against such charge. *Attwood v. Jolliffe and another*, 35 L. O. 611.

See *Action against Magistrate*, 2.

CORONER.

Corporate officer.—*Costs of relator*.—9 Anne, c. 20.—A coroner of a borough appointed under the 62nd section of 5 & 6 W. 4, c. 76, is not a corporate officer within the meaning of the 9 Anne, c. 20, and therefore the relator to a *quo warranto* to determine whether the office of coroner to a borough is properly filled, is not entitled to his costs on issues found for him. *Reg. on the prosecution of Rogerson v. Grimshaw*, 35 L. O. 216.

See *Mandamus*, 2.

DISTRESS FOR POOR RATES.

A warrant of distress for poor rates need not in terms state that the refusal to pay the rate was proved *upon oath*; it is enough to state that it was *duly proved*.

The misrecital, in a warrant of distress for poor rates, of the *date* of the rate is not material. *Ormerod v. Chadwick*, 16 M. & W. 367.

Cases cited in the judgment: *Reg. v. Rotherham*, 2 Q. B. 557; *Ex parte Aldridge*, 2 B. & C. 600; *Ex parte Jones*, 1 N. Sess. Ca. 3; *In re Grey*, 2 D. & L. 539; *Reg. v. Lewis*, 1 D. & L. 822; *In re Tordoff*, 1 N. Sess. Ca. 171; *Rex v. Fisherton Delamora*, Sess. Ca. 45; *Rex v. Luffe*, 8 East, 193; *Reg. v. King's Lynn*, 15 Law J., N. S., M. C. 93; *Harper v.*

Carr, 7 T. R. 270; *Coster v. Wilson*, 3 M. & W. 411.

EXAMINATION.

1. *Statement of binding apprentice*.—In an examination, after loss of an indenture of apprenticeship and sufficient search had been shown, the following evidence was given:—"In or about May, 1831, the pauper was, by his own consent, his father and mother being dead, bound by indenture of apprenticeship, bearing date," &c., "which was duly stamped and executed," to serve, &c., "as an apprentice, for the term of six years then next following. I saw the indenture executed." *Held*, sufficient to prove a binding as apprentice. *Reg. v. Inhabitants of St. Anne, Westminster*, 8 Q. B. 561.

2. *Evidence of acknowledgment of relief*.—"While in the parish of N. I received monthly relief from H." (parish); and "I was relieved in the workhouse" of N. "by the parish of H." These statements in the examination of a pauper were held sufficient evidence of acknowledgment by parochial relief to warrant an order of removal to H. *Reg. v. Inhabitants of Hartpury*, 8 Q. B. 566.

3. *Statement as to stamp of deed produced before removing justices*.—Respondents in an appeal against an order of removal sent to appellants, with a copy of their order and notice of chargeability, a copy of an indenture of apprenticeship, (under which the alleged settlement was gained,) together with the examination of a witness who stated:—"I produce a covenant indenture of apprenticeship," &c., (describing it). "The indenture is duly stamped." *Held*, that, the stamp being no part of the indenture, it was not necessary to send any "copy" of it; and that the statement and indenture, taken together, conveyed sufficient information to the appellants, and showed that the removing justices had evidence of a settlement.

Seem, that it was not necessary to send any statement respecting the stamp at all. *Reg. v. Inhabitants of Keighley*, 8 Q. B. 877.

See *Chargeability*.

HIGHWAY RATE.

1. A local and personal act, providing that the plaintiff, amongst others, being rated under it, within a certain district, should be "released and free from all rates and assessments towards the paving and lighting any other street," &c. does not exempt the plaintiff from liability to be assessed for a rate made under the General Highway Act on the whole parish.

The circumstance that part of the latter rate might be applied to paving as well as lighting, is not sufficient for that purpose, and does not render a magistrate issuing a distress warrant liable in an action of trespass. *Richardson v. Tubbs*, 34 L. O. 566.

2. *Repair*.—In an indictment for the non-repair of a road, to which the defendants pleaded not guilty, and the evidence showed that the road never was a hard road, and that it was in as good state of repair as it had usually been heretofore; the Court held, that the question

to be submitted to the jury was, whether the road was in a state in which the public could pass along with ordinary convenience; and the degree of repair, with reference to the original state of the road, was not a question for their consideration. *The Queen v. The Inhabitants of Henley*, 35 L. O. 99.

LUNATIC, PAUPER.

1. 9 G. 4, ss. 38, 41, 42.—*Certiorari*.—New objections on motion to quash order.—Two justices, acting in and for the county of K., made, on 13th Nov. 1843, an order under stat. 9 G. 4, c. 40, for removing a lunatic from a parish to which he was chargeable, in that county, to a house licensed for the reception of lunatics in the county of S. They at the same time inquired into the lunatic's settlement, but receiving only hearsay evidence, made no order of maintenance. On 30th Nov., the lunatic having been removed on the 17th to, and being still confined in, the licensed house under the order of the 13th, the same justices, acting in and for the county of K., inquired further, and ascertained the place of the lunatic's settlement to be in K., a parish in that county, and made an order whereby, after reciting the order of 13th Nov., they adjudicated the lunatic's settlement to be in K., and directed the overseers of K. to make certain weekly payments to the keepers of the licensed house for the care, &c. of the lunatic there. The order adjudicating the settlement did not purport to have been made on an adjournment of the inquiry on Nov. 13.

On appeal by K. against the order of 30th Nov., the appellants stated in their notice of appeal, amongst other objections to the form of that order, that the order appealed against, and the order therein recited, were not respectively made by two justices of the peace acting in and for the county in which the licensed house was situate. The sessions confirmed the order, subject to the opinion of this Court on the question, whether the order of 30th Nov. was bad on any of the grounds stated in the notice of appeal.

The *certiorari* was issued on a motion paper handed in to the Crown office without motion in open Court; the return brought up both the order of 30th Nov. and the order of sessions confirming it. A rule *nisi* for quashing both orders was drawn up on the motion paper, also handed into the Crown office, without motion in open Court. After the case had been some weeks in the Crown Paper for argument, the appellants delivered additional points for argument, proposing thereby to show that the order of 30th Nov. was bad on the face of it, for defect of jurisdiction, on grounds not submitted in the special case.

Held, that the appellants could not, on a rule to quash, obtained as above-mentioned, go into points not reserved in the special case. But, that the justices having been unable, on 13th Nov., to come to a decision on the settlement, the settlement was then one which could not be ascertained, within stat. 9 G. 4, c. 40, s. 41;

and that, after the removal of the lunatic into S., the justices of K. had no jurisdiction, under ss. 38, 41, and 42, to make the order of 30th Nov. *Reg. v. Inhabitants of Heyop*, 8 Q. B. 547.

2. *Chargeability*.—An appeal against an order for payment of maintenance and expenses of a pauper lunatic, under 8 & 9 Vict. c. 126, s. 62, which recites an order adjudicating the settlement of the pauper, is an appeal also against the settlement.

The 8 & 9 Vict. c. 126, s. 62, incorporates so much of the 4 & 5 W. 4, c. 76, s. 79, as is applicable to the case of an appeal against an order adjudicating the settlement of a lunatic pauper. A copy of the examinations must therefore be sent to the parish on whom an order for maintenance, &c., of a lunatic pauper, reciting an adjudication of the settlement, is made.

Seem, that, in the case of a lunatic pauper, a notice of chargeability under 4 & 5 W. 4, c. 76, s. 79, need not be sent. *Reg. v. Justices of Middlesex*, 5 D. & L. 9.

MANDAMUS.

1. *Appeal*.—*Notice*.—After a notice "to enter and try" an appeal had been served on the respondents, the attorney of the appellants, thinking the words "to enter" were improper, as the appeal had already been entered and respited, obtained the notice back, altered it by striking out the words "to enter," and by inserting a statement that the former notice was thereby withdrawn, and caused it to be reserved, but without getting the parish officers to re-sign it. Upon the appeal being called on at the sessions, the appellants were put to prove their notice of appeal. They accordingly proved the original notice; upon which the respondents objected that that notice had been withdrawn, and called the appellant's attorney, who proved the 2nd notice withdrawing the first. There was no proof, however, at what time the second notice was served. The sessions dismissed the appeal on the ground "that the notice of appeal was not sufficiently proved."

On motion for a mandamus to the sessions to hear the appeal, *held*,

1st, That the original notice was a sufficient notice, the words "to enter" being merely redundant; but that it was withdrawn by the second notice.

2ndly, That the second notice was a sufficient notice, and did not require re-signing by the parish officers, as the alterations were mere corrections for the purpose of carrying out the original purpose for which the signatures were affixed, and which it was part of the attorney's duty to accomplish; but that as there was no proof of the time of its service, the sessions had come to a right decision in refusing to hear the appeal. *Reg. v. Justices of Somersetshire*, 4 D. & L. 741.

2. *Coroner*.—*Inquests*.—*Fees*.—Where justices at quarter sessions had refused to allow a coroner his fees and disbursements in respect

of two inquests, on the ground that the inquests had been improperly held, the Court, on application for a mandamus to the justices to allow such fees and disbursements: *Held*, that they would not interfere with the discretion exercised by the justices with respect to the fees due to the coroner as remuneration for his own trouble, but made the rule absolute for the repayment of the sums of money which had been disbursed by the coroner. *The Queen v. The Justices of Carmarthenshire*, 34 L. O. 421.

3. *Parochial Assessment Act*.—*Service of notice of objection*.—In order to entitle a person to be heard before justices at special sessions, under the Parochial Assessment Act, 6 & 7 W. 4, c. 96, s. 6, against a rate made for the relief of the poor, it is only necessary to prove service of notice of objection on one of the parish officers who made the rate. *The Queen v. Seale and others*, 35 L. O. 434.

MASTER AND SERVANT.

Conviction.—*Prisoner*.—*Bail*.—*Recommitment*.—Where a *certiorari* had issued to bring up a conviction under the Masters' and Servants' Act (4 G. 4, c. 34), for the purpose of being quashed for defects on the face of it, the Court admitted the defendant, who was in prison under the conviction, to bail.

Semble, that the Court has power, in case the conviction be affirmed, to re-commit the defendant for such further time as he would otherwise have passed in prison. *Lord, ex parte*, 4 D. & L. 405.

Case cited in the judgment: *Rex v. Reader*, 1 Stra. 531.

NOTICE OF ACTION.

See *Action against Magistrate*.

PARISH PROPERTY.

1. *Trustees*.—Buildings and lands were conveyed by B. and G. to N. and R. in fee, to the use of B., G., N., and R. in fee, "upon trust to receive and take, or otherwise permit and suffer the churchwardens" of a parish, "for the time being, yearly for ever to receive and take, the rents, issues, profits and annual payments and proceeds," "as the same should arise or become payable, for or towards the repairs of the parish church," "and for the benefit of the said parish, so and in such manner as the same had theretofore been usually or lawfully applied and disposed of, and according to the intentions of the several charitable persons who gave or devised the said premises respectively, they, the said churchwardens yearly at Easter accounting to the parishioners," "in vestry assembled, for the same."

Among the parcels conveyed were four cottages, described in the conveyance as situate in the parish, "wherein four families were permitted to dwell 'rent free.'"

Held, that the property vested, under stat. 59 G. 3, c. 12, s. 17, in the parish officers, and that they were the proper parties to sue for use and occupation of the premises conveyed; and that such action could not be maintained by the trustees. *Rumball v. Munt*, 8 Q. B. 382.

Cases cited in the judgment: *Doe d. Jackson v. Hiley*, 10 B. & C. 885; *Alderman v. Neate*, 4 M. & W. 704; *Doe d. Higga v. Terry*, 4 A. & E. 274.

2. *Trustees*.—In 1749, land was conveyed by deed to trustees, upon trust to permit the churchwardens and overseers for the time being of a parish to receive the rents, &c., to and for the use and benefit of the poor of that parish; and the deed gave the trustees for the time being power to lease for 21 years: *Held*, that although the trusts were general, still the legal estate was not vested in the parish officers by stat. 59 G. 3, c. 12, s. 17; because there were known existing trustees under the deed, and the provisions of the stat. were insufficient to divest their estate. *Churchwardens of Deptford v. Sketchley*, 8 Q. B. 394.

Cases cited in the judgment: *Rumball v. Munt*, 8 Q. B. 382; *Attorney-General v. Lewin*, 8 Sim. 366; *In re Paddington Charities*, 8 Sim. 629; 7 Law J., N. S., Eq. Ca. 44; *Allason v. Stark*, 9 A. & E. 255.

QUARTER SESSIONS.

Jurisdiction.—Upon appeal by the overseers of the township of W. K. against an order of removal made upon the parish of W. K., but which disclosed a settlement in the township of W. K., it appeared that the parish contained 10 townships, of which the township of W. K. was one. That there were two churchwardens appointed for the parish generally, but no overseers. That the township of W. K. had its overseers. It was objected that the notice and grounds of appeal were incorrectly signed by the overseers alone, and that they should have been signed by the churchwardens of the parish also. The Court of Quarter Sessions, after hearing evidence as to W. K. being a township, supporting its own poor, decided that the notice was incorrectly signed, and that there was no sufficient evidence that W. K. was such a township: *Held*, that as the sessions had received evidence as to W. K. being a township supporting its own poor, and were of opinion that it was not, their decision was a decision on a question of fact, with which this Court would not interfere. *Reg. v. Justices of Flintshire*, 4 D. & L. 644.

Case cited in the judgment: *Reg. v. Justices of Kesteven*, 3 Q. B. 810; 1 D. & M. 113.

QUASHING ORDER OF REMOVAL.

One of several grounds of appeal.—Appellants against an order of removal stated, amongst other grounds of appeal, some of which affected the merits of the settlement, that the examinations did not contain sufficient evidence of chargeability. On the trial of the appeal, the respondents, who had given no notice of intention to abandon the order, stated that they could not support it against the above objection, and, without going farther into the case, moved the Court to quash the order on that ground, and make a special entry. The appellants stated that they did not rely on that objection, and called upon the Court to hear

and determine the appeal on the other grounds; but the Court refused, and quashed the order, with a special entry that they did so, after a full hearing, on the ground of the objection to the proof of chargeability.

Held, that the decision was right, and this Court refused a mandamus to enter continuances and hear the appeal on the merits. *Ex parte Inhabitants of Wellingborough*, 8 Q. B. 123.

QUASHING WRIT OF ERROR.

When the transcript of the record of a writ of error has gone up to the Court of error, this Court has no power to grant a rule to quash the writ of error under 8 & 9 Vict. c. 68, s. 5. The motion must be made to the Court of Error. *Reg. v. Broom and another*, 35 L. O. 345.

RATE.

1. *Publication*.—1 Vict. c. 45.—Under 1 Vict. c. 45, it is a sufficient publication of a poor rate if a copy of it be affixed, before Divine Service, on the Sunday next after its allowance, on the *principal or most usual door* of all the churches and chapels of the Established Church within the parish, in which divine service is performed. It is not necessary to publish it on *all* the doors of any church or chapel, nor on the door of a church or chapel in which divine service has ceased to be performed, nor on the door of any buildings, not being a church or chapel, in which divine service is performed. *Ormerod v. Chadwick*, 16 M. & W. 367.

2. 17 G. 2, c. 3, s. 3.—6 & 7 W. 4, c. 96.—*Repeal of earlier by later statute*.—*Demand of copy*.—The penalty imposed by stat. 17 G. 2, c. 3, s. 3, upon an overseer not giving a copy of a poor rate on demand, is claimable in the case of a poor rate made under the regulations of stat. 6 & 7 W. 4, c. 96, (the Parochial Assessment Act,) the latter statute not repealing the former. *Tennant v. Cranston*, 8 Q. B. 707.

See *Chapel Rate*; *Distress for Rate*.

REMOVAL.

Copies of Documents to be sent to the appellants.—Copies of all the examinations taken, and of all documents received by the removing justices touching the settlement of a pauper, must be sent with a copy of the order to the appellants.

Where an examination set up two grounds of removal, one by hiring and service, and the other by a previous order of removal unappealed against, but a copy of this previous order was not sent with the other examinations:

Held, that the respondents were precluded from going into proof of either ground of settlement. *The Queen v. The Inhabitants of Mylor*, 35 L. O. 293.

See *Appeal*, 1, 3, 4, 5; *Apprentice*, 2.

SETTLEMENT.

1. *Dividing of parish into several townships*.—*Signature to notice of grounds of appeal*.—A parish consisted of eight townships. Overseers

were appointed annually, sometimes one for each township, sometimes one for two or more townships, and others for the rest, and sometimes four for the whole district. There were churchwardens for the whole parish. An equal poor-rate was always agreed to at a general parish vestry, by the churchwardens and overseers; and the rate of allowance to paupers was settled at such vestries. Separate poor-rates were made, allowed and published, and the money collected by the overseers in the townships for which they acted, and paid by them to the poor of their districts respectively. Those who had a surplus brought it to the parish vestry, and it was applied in aid of those who were deficient; if any balance remained, it was placed to the general account, and awarded to the new overseers for the next year's expenses. In 1833, under a *mandamus*, the townships were divided, and became entirely separate in the appointment of overseers and management of the poor.

Pauper, in 1815, gained a settlement by hiring and service; everything which conferred the settlement taking place in G., one of the above townships. From 1815 to 1844 she received relief from G., while residing elsewhere. On appeal against an order made in 1844, removing her to G., the sessions quashed the order subject to a case raising the question whether, on the above facts, the pauper was settled in G.

Held, that the settlement gained in 1815 did not confer a settlement in the newly separated district of G. And that relief given by G. was only evidence, on which the judgment of the sessions was conclusive.

Order of sessions confirmed; though the notice of grounds of appeal was signed only by the overseers of G., and not by the churchwardens of the parish in which the eight districts lay, and the sufficiency of the signature was a question submitted in the case. *Reg. v. Inhabitants of Acton*, 8 Q. B. 108.

Case cited in the judgment: *Reg. v. Tipton*, 3 Q. B. 215.

2. *Acquisition of father's settlement by son*.—*Emancipation*.—For the purpose of settlement, a son is not emancipated before the age of 21, unless he marries and so becomes the head of a family, or contracts some other relation so as wholly and permanently to exclude the parental control.

H. lived until he was 17 years old, with his father; he then voluntarily entered the local militia, and was sworn in for four years. He served, as required by law, 28 days in each year, and during the residue of the time, worked as a weaver for wages, and maintained himself; saw his father occasionally, but never returned to live with him; and at the age of 20 he married: *Held*, that H. was emancipated on his marriage and not before, for that neither the service in the militia nor the employment at other times as a weaver created any relation permanently excluding parental control, and the emancipation by marriage did not relate

back to the time when *H.* separated himself from his father. And therefore, that *H.* derived from his father a settlement acquired by him between that separation and the marriage. *Reg. v. Inhabitants of Scammonden*, 8 Q. B. 349.

Case cited in the judgment: *Rex v. Wilmington*, 5 B. & Ald. 525.

See *Appeal*, 1.

SPECIAL CASE.

Where a writ of certiorari has been granted to bring up an original order of removal, and also a special case from the Court of Quarter Sessions, the Court will not permit any other objections to be taken than those reserved by the special case, although it was mentioned to the Court when the writ was moved for, that it was intended to make such other objections to the order, and although the rule upon which the argument took place was to show cause why the original order, as well as the order of sessions, should not be quashed, the points reserved by the special case not applying to the original order at all. *The Queen v. The Inhabitants of Hartpur*, 35 L. O. 11.

See *Appeal*, 6.

SURGEON FOR COUNTY GAOL.

Justices' appointment.—By 14 G. 3, c. 59, s. 1, justices in quarter sessions assembled were authorized and required to appoint a surgeon, at a stated salary, to attend prisoners in gaol. The 4 G. 4, c. 64, (which repealed the 14 G. 3, c. 59, so far as related to the gaols of certain enumerated cities, not including "Ipswich,") by s. 33, enacted, that justices in general, or quarter sessions assembled, should from time to time appoint a surgeon to prisons within their jurisdiction, and it should be lawful for them, after such appointment, to direct a reasonable sum to be paid as salary to each surgeon. The 5 & 6 W. 4, c. 76, s. 116, enacts, that the town council of boroughs enumerated in the 4 G. 4, c. 64, shall thenceforth have all the powers which justices in sessions possessed under that act; and section 105 enacts, "that the recorder of every borough shall hold quarter sessions of the peace, at which he shall be the sole judge." The 7 W. 4, and 1 Vict. c. 78, s. 38, enacts, "that all powers of regulation which before the passing of the 5 & 6 W. 4, c. 76, were possessed by the justices, and all things by any act of parliament provided to be done at any quarter sessions, in relation to the regulation of any gaol, should be exercised by the borough justices, who should for that purpose hold a quarter sessions, provided that no order of the justices which should require the expenditure or payment of money, should be of force until confirmed by the council. The 2 & 3 Vict. c. 56, extended the provisions of the 4 G. 4, c. 64, to all gaols. *Held*, that the effect of the 7 W. 4, and 1 Vict. c. 78, was to restore to the borough justices the power which they possessed before the 5 & 6 W. 4, c. 76, of appointing a surgeon; and that the 2 & 3 Vict. c. 56, put all borough gaols, with reference to

the 4 G. 4, c. 64, on the same footing with the gaols of the borough there enumerated, as if that statute had extended to all boroughs; and therefore, that the right of appointing a surgeon for Ipswich gaol was properly exercised by the borough justices. *Hammond v. Peacock*, 1 Exch. R. 41.

Cases cited in the judgment: *Rex v. Recorder of Hull*, 8 A. & E. 639; *Rex v. Inhabitants of St. Lawrence, Ludlow*, 1 A. & E. 170; *Reg. v. Bishop of Bath and Wells*, 5 Q. B. 162.

SURVEYOR OF HIGHWAYS.

1. 5 & 6 W. 4, c. 50, s. 109.—Declaration, in case, charged that defendant was, under the Highway Act, (5 & 6 W. 4, c. 50,) surveyor of the parish of *T.*; that gravel had been placed on a highway in *T.*, by means of which gravel the highway was obstructed, and the gravel was a nuisance to the public; that defendant had notice, and was requested to remove the same; but he, well knowing, &c., did not nor would, in a reasonable time, remove or cause it to be removed, but, on the contrary, conducted himself with gross negligence, and knowingly, wilfully, and wrongfully, and in violation of his duty as such surveyor, permitted, suffered, and caused the gravel to continue and be upon the highway, obstructing the same, remaining and being a nuisance to the public for a long and unreasonable time, without taking any care or precaution to guard against danger or damage to persons passing, contrary to his duty in that behalf as such surveyor: by means of which plaintiff's carriage was overturned. It was proved that defendant had notice of the gravel being laid, and had been guilty of want of care in leaving it there; and that this had caused the accident. *Held*, that defendant was charged with a thing done in pursuance of the act, and was therefore entitled to notice under section 109. *Davis v. Curling*, 8 Q. B. 286.

2. *Highway-rate.*—The appointment of a surveyor of the highways by justices at a special sessions, upon neglect or refusal on the part of the parish to nominate and elect a surveyor, under the 5 & 6 W. 4, c. 50, s. 11, is invalid, if made at the same sessions at which the neglect or refusal appears.

The 5 & 6 W. 4, c. 50, s. 6, which enacts, that the inhabitants of a parish maintaining its own highways, shall proceed to the election of the highways "at their first meeting in vestry for the nomination of overseers of the poor in every year," requires the vestry to be one, of which due notice has been given in pursuance of the 58 G. 3, c. 69, s. 1.

Where it appears that two rates for the repairs of the highways are co-existent, the Court will not presume that they are made for the same period of time, and therefore invalid. *Reg. v. Best*, 5 D. & L. 40.

TRUST.

See *Parish Property*.

VESTRY.

See *Certiorari*, 3.

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SATURDAY, AUGUST 12, 1848.

———“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

POOR REMOVAL PROCEDURE AMENDMENT ACT.

SHORTLY after the commencement of the Session of Parliament, (vol. 35, page 401,) we called the attention of our readers to, and printed an abstract of, a bill, introduced by Mr. Baines to the House of Commons, “to amend the procedure in respect of orders for the removal of poor persons in England and Wales, and appeals therefrom.” We ventured then to remark, that the bill was manifestly framed by one practically acquainted with the subject-matter of its provisions; and we are happy now to find that the merits of the bill have been appreciated, and that it has obtained the legislative sanction without any considerable alteration, and came into actual operation on the 1st August instant.*

The object of the measure, thus successfully carried through parliament by the honourable and learned Member for Hull, our readers will remember, is to prevent expensive and useless litigation at the Quarter Sessions, in settlement cases, so that questions of disputed settlement may be determined upon the merits, and not upon technical objections arising for the most part on matters of form, wholly beside the only substantial question at issue between the litigating parishes. It would not be easy to particularize any subject on which judicious legislation was more desirable. The obligation of one parish, rather than

another, to maintain a pauper, is one which ought not to depend upon legal subtleties, but upon an ascertainment of simple facts; and it was a monstrous anomaly, and a scandal to the administration of justice, that the determination of a question of this nature was frequently attended with a greater expense than that arising from the maintenance of the pauper. The most fruitful source of litigation was that created by the 78th section of the ‘New Poor Law Act, 4 & 5 W. 4, c. 76, providing that “the notice of chargeability should be accompanied by a copy of the examination upon which the order of removal was made.” It was holden that the examination so founded should disclose a sufficient case to justify the order of removal made by the justices, and as the examinations were frequently taken without much previous consideration, or any very accurate acquaintance with the established rules of evidence, it followed, almost as of course, that even when the copy sent with the notice of chargeability was an exact counterpart of the original, it frequently turned out to be defective in form or substance, and after a contested appeal to the Quarter Sessions, occasionally followed by a special case to the Court of Queen’s Bench, the whole procedure was rendered unavailing, by reason of some omission or mistake altogether irrespective of the material facts. The remedy the new act provides for this evil, which a series of unfortunate decisions had greatly magnified, is to dispense with the obligation of sending a copy of the examinations with

* See the Act, *post*, 298.

the notice of chargeability, but to substitute a statement of the grounds of removal, which must disclose the particulars of the settlement relied upon to support the magistrates' order. In order to render this statement of any value, it is of course provided, that in case of appeal, the removing parish shall be bound by this statement, and precluded from entering upon or proving any other or different grounds of removal from those set forth in the statement thus furnished to the appellaut parish. The statement is not required to be in any precise form, but it must be sufficient to enable the parish, to the officers of which it is addressed, to inquire into the subject-matter, and, if they deem it expedient, to prepare for the trial of the question at issue. If the statement be insufficient, it may be amended, at the discretion of the Court, upon such terms as are deemed reasonable.

Now we are far from insinuating that these provisions are not a very obvious and decided improvement upon the present system, but they do not afford anything like a complete remedy. The statement to be substituted for the examinations must necessarily be open to many of the objections which prevailed with respect to examinations. Such statements will occasionally be framed inadvertently and in ignorance of the law; and although the justices should in all cases determine as to the sufficiency or insufficiency of the statement upon the most liberal principle, without any regard to legal precisibn, but by a reference to the question, whether the alleged defect was likely to mislead the opposite party, that is clearly a question which admits of a wide field for the exercise of ingenuity and sophistry, and which may lead to very conflicting decisions. It is indeed provided, that the decisions of the Courts upon the hearing of any appeal as to the sufficiency of the grounds of removal and appeal, and also of the notice of chargeability and the order of removal, as well as the amending or refusing to amend any order or statement, shall be final, and not liable to review in any Court; but it must be remembered that one Court of Quarter Sessions is in no respect concluded, or even influenced, by the decisions in another Court, and therefore, that the abolition of appeals, although it may diminish litigation, will not produce uniformity.

Those of our readers who are conversant with the practice of the Quarter Sessions in settlement cases, are aware that, although the examinations furnished the largest crop of technical objections, the notice of charge-

ability, the order of removal itself, and also the notice and grounds of appeal, all, in their turn, furnished materials for objections, which too often prevailed, without any regard to the substantial point in dispute. The 11 & 12 Vict. c. 31, does not propose to provide any remedy for this evil. The notice of chargeability, and the copy or counterpart of the order of removal, and the notice and grounds of appeal, must continue to be sent as heretofore, and will be liable to precisely the same objections as before the present act passed. Whilst grateful for the benefits it has conferred, and anxious to express our sense of the clearness and ability with which the proposed amendment is sought to be effected, we feel some regret that Mr. Baines did not grapple with the evil with more boldness, and frame a measure of more extensive application. We are quite ready to admit, however, that the caution which the honourable and learned member for Hull has evinced, in this his first essay, does not render it the less likely that he will turn out a useful, as well as a successful member of the legislature.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the *present* Session of Parliament, printed in ~~the~~ and the last volume of the *Legal Observer*, are as follow:—

Extending Time for making Railways, vol. 35, p. 204.

Regulating the Queen's Prison, p. 558.

North American Passengers, p. 581.

Crown and Government Security, p. 600.

Oaths in Chancery, vol. 36, p. 7.

Stamp Duties Assimilation, p. 8.

Trial of Controverted Elections, p. 23.

Removal of Aliens, p. 182.

Annual Indemnity, p. 221.

Suspension of the Habeas Corpus Act (Ireland), p. 280.

POOR REMOVAL ORDERS.

11 & 12 VICT. C. 31.

An Act to amend the Procedure in respect of Orders for the Removal of the Poor in England and Wales, and Appeals therefrom. [22nd July, 1848.]

1. 4 & 5 W. 4, 76, as provides that certain notices shall be accompanied by a copy of examination, &c. repealed.—Whereas the commu-

nication now by law required to be made, by the overseers or guardians of any parish seeking to enforce an order for the removal of a poor person to the overseers or guardians of the parish to which such poor person is intended to be removed, of a copy of the examination upon which such order has been made, has been found to produce much expensive and useless litigation upon points of mere form, so that few cases of appeals against such orders are now decided upon their merits: For remedy thereof be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That so much of an act passed in the session of parliament holden in the 4 & 5 W. 4, 3. 76, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," as provides, in cases of orders of removal, that the notice thereby required to be sent by the overseers or guardians of the parish obtaining the order shall be accompanied by a copy of the examination upon which such order was made, shall be and the same is hereby repealed.

2. *Such notice to be accompanied by a statement of grounds of removal instead of copy of examination.*—That instead thereof such notice shall be accompanied by a statement in writing under the hands of such overseers or such guardians, or any three or more of such guardians, setting forth the grounds of such removal, including the particulars of the settlement or settlements relied upon in support thereof: Provided always, that on the hearing of any appeal against any order of removal, it shall not be lawful for the respondents to go into or give evidence of any other grounds of removal than those set forth in such statement.

3. *Copy of depositions to be furnished on application.*—That the clerk to the justices who shall make any order of removal shall keep the depositions upon which such order was made, and shall within seven days furnish a copy of such depositions to the overseers or guardians as aforesaid of the parish to which the removal is by such order directed to be made, if such overseers or such guardians shall apply for such copy, and pay for the same at the rate of 2d. for every folio of 72 words; provided, that no omission or delay in furnishing such copy of the depositions shall be deemed or construed to be any ground of appeal against the order of removal; provided also, that on the trial of any appeal against an order of removal no such order shall be quashed or set aside, either wholly or in part, on the ground that such depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to the order or grounds of removal.

4. *As to the sufficiency of statement of grounds of removal or appeal.—Power to amend statement of grounds of removal or appeal.*—And whereas a statement of the grounds of removal or of appeal is required to be communi-

cated for the purpose of enabling the party receiving it to inquire into the subject of such statement, and, if need be, to prepare for trial: be it therefore enacted, That upon the hearing of any appeal against an order of removal no objection whatever on account of any defect in the form of setting forth any ground of removal or of appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of a ground of removal or appeal alleged to be set forth in any such statement shall prevail, unless the Court shall be of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial: Provided always, that in all cases where the Court shall be of opinion that any such objection to such statement or to the reception of evidence ought to prevail, it shall be lawful for such Court, if it shall so think fit, to cause any such statement of grounds of removal or appeal to be forthwith amended by some officer of the Court or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions or the next subsequent sessions, or both payment of costs and postponement, as to such Court shall appear just and reasonable.

5. *Party making frivolous or vexatious statement of grounds of removal or appeal liable to pay costs.*—That if either of the parties to the said appeal shall have included in the statement of grounds of removal or of appeal sent to the opposite party any ground or grounds of removal or of appeal which shall, in the opinion of the Court determining the appeal, be frivolous and vexatious, such party shall be liable, at the discretion of the said Court, to pay the whole or any part of the costs incurred by the other party in disputing any such ground or grounds, such costs to be recovered in the same manner as any penalties or forfeitures are recoverable under the said act passed in the session of parliament holden in the 4 & 5 W. 4.

6. *Power for Court to amend order of removal on account of omission or mistake.—Proviso.*—That if upon the trial of any appeal against an order of removal, or upon the return to a writ of certiorari, any objection shall be made on account of any omission or mistake in the drawing up of such order, and it shall be shown to the satisfaction of the Court that sufficient grounds were in proof before the magistrates making such order to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the Court, upon such terms as to payment of costs as it shall think fit, to amend such order of removal, and to give judgment as if no such omission or mistake had existed: Provided always, that no objection on account of any omission or mistake in an order of removal brought up upon a return to a writ of certiorari shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such writ of certiorari.

7. *Decisions of Courts upon hearing of appeals final.*—That the decision of the Court upon the hearing of any appeal against any order of removal, as well upon the sufficiency and effect of the statement of the grounds of removal and of appeal, and of the notice of chargeability, and of the copy or counterpart of the order of removal sent to the appellants parish, as upon the amending or refusing to amend the order of removal as aforesaid or the statement of grounds of removal or appeal, shall be final, and shall not be liable to be reviewed in any Court, by means of a writ of certiorari or mandamus, or otherwise.

8. *Abandonment of orders of removal.—As to payment of costs on abandonment.*—That in any case in which an order shall have been made for the removal of any poor person, and a copy or counterpart thereof sent as by law required, it shall and may be lawful for the overseers or guardians of the parish who shall have obtained such order of removal, whether any notice of appeal against such order shall or shall not have been given, and whether any appeal shall have been entered or not, to abandon such order by notice in writing under the hands of such overseers or guardians, or any three or more of such guardians, to be sent by post or delivered to the overseers or guardians as aforesaid of the parish to which such person is by the said order directed to be removed; and thereupon the said order, and all proceedings consequent thereon, shall become and be null and void to all intents and purposes as if the same had not been made, and shall not be in any way given in evidence in case any other order of removal of the same person shall be obtained: Provided always, that in all cases of such abandonment the overseers or guardians of the parish so abandoning shall pay to the overseers or guardians of the parish to which such person is by the said order directed to be removed the costs which the said last-mentioned overseers or guardians shall have incurred by reason of such order, and of all subsequent proceedings thereon, which costs the proper officer of the Court before whom any such appeal (if it had not been abandoned) might have been brought shall and he is hereby required, upon application, to tax and ascertain at any time, whether the Court shall be sitting or not, upon production to him of such notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the overseers or guardians abandoning such order as the distance between the parishes shall in his judgment require, and thereupon the sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be indorsed upon the said notice of abandonment, and the said notice so indorsed shall be filed among the records of the said Court; and if the said costs so allowed be not paid within 10 days after such costs shall have been lawfully demanded the amount thereof may be recovered

from such last-mentioned overseers or guardians in the same manner as any penalties or forfeitures are recoverable under the said act passed in the Session of Parliament holden in the 4 & 5 W. 4.

9. *No appeal if notice be not given within a certain time after notice of chargeability.*—That no appeal shall be allowed against any order of removal if notice of such appeal be not given as required by law, within the space of 21 days after the notice of chargeability and statement of the grounds of removal shall have been sent by the overseers or guardians of the removing parish to the overseers or guardians of the parish to which such order shall be directed, unless within such period of 21 days a copy of the depositions shall have been applied for as aforesaid by the last-mentioned overseers or guardians, in which case a further period of 14 days after the sending of such copy shall be allowed for the giving of such notice of appeal; but in such case no poor person shall be removed under such order of removal until the expiration of such further period of 14 days.

10. *Service of suspended orders of removal and orders consequent thereon.*—That all the provisions which relate to the sending and service of copies of orders of removal shall apply to such orders when suspended, and to all orders consequent upon such suspension, and to all copies of charges arising thereon, and demands of payment of such charges.

11. *3 & 5 W. 4, c. 76, and all acts amending the same, to be construed with this act.*—That the said act passed in the Session of Parliament holden in the 4 & 5 W. 4, intituled, "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," and all acts to amend and extend the same, and the present act, shall (except so far as the provisions of any former act are altered, amended, or repealed by any subsequent act,) be construed as one act.

12. *Commencement of Act.*—That this act shall commence and take effect on the 1st day of August, 1848.

A new bill has just been introduced to extend the meaning assigned to the words "removable" and "children," in the 9 & 10 Vict. c. 66, s. 1; and to provide that "the term *removable* shall signify a person not rendered exempt from liability to be removed by any of the provisions of that act.

TRUSTEES' FURTHER RELIEF BILL.

UNDER the 10 & 11 Vict. c. 96, difficulties have arisen in the Transfer of Securities vested in Trustees, where *all* of such Trustees do not concur.

A Bill has been introduced by the Lord Chancellor to enable the Court of Chancery to order the payment or transfer of trust monies, stocks or securities into the Court of Chancery on the application of a majority of the trustees.

CHARITY TRUST REGULATION BILL.

THE 6th clause of this bill, which was particularly objectionable on account of its enabling the Court of Chancery to refer to the judges of the County Court inquiries into charity trusts to any amount, and which might therefore have included the Royal Hospitals of London, has been amended, and it now excludes charities wholly or in part within 20 miles of London. Thus the powerful opposition of the city has been neutralised. There are also numerous charitable institutions of great magnitude which are likewise excluded from the scope of the bill, on the same ground, we presume, as the city hospitals, viz., where the funds are wholly or partly derived from voluntary subscribers. The danger was, that if the management of these charities were in any respect taken out of the hands of the present governing bodies, the members would cease to bestow their time and money in support of such institutions. We are glad that this objection has also been removed from the bill by the 25th clause.

The 24th section provides that the trustees of all charities not exceeding 100l. are to render an annual account of their receipts and expenditure to the clerk of the County Courts, to be open for the inspection of all persons, upon payment of 1s. to the clerk.

In the 6th section it is also provided, that inquiries and proceedings may be taken in the County Court, in like manner as before a Master in Chancery, the reference to the judge being made by a decree or order, and the judge is to have the same authority and jurisdiction, but his proceedings are to be subject to revision or confirmation by the Court of Chancery, in the same manner as the Masters in Chancery.

FEEES IN CHANCERY AND LUNACY BILL.

THE Solicitor-General has introduced a bill to enable the Lord Chancellor to authorize the collection of the fees payable on proceedings in Chancery and Lunacy, by means of stamps. This measure arises out of the inquiry before the Committee of the House of Commons, into the "Taxes on Justice." A large part of the fees will, no doubt, be soon abolished, but in the meantime this bill has been introduced to facilitate the collection of fees, and secure the due accounting for them. It is therefore proposed that in all cases in which any fees

are now or shall be hereafter payable in relation to any proceedings in the Court of Chancery or in lunacy, and which fees are required to be paid into the Bank of England to the account called "The Suitors' Fee Fund Account," the Lord Chancellor, with the advice and concurrence of the Master of the Rolls, or any one of the Vice-Chancellors, with respect to fees payable in relation to proceedings in Chancery, and for the Lord Chancellor alone, with respect to fees payable in relation to proceedings in lunacy, may order that all or any such fees, to be mentioned in such order, shall thenceforward be collected by means of stamps to be provided and used in manner hereinafter mentioned, (s. 1).

From and after the day named in the order, none of the fees mentioned therein shall be received in money, but in lieu thereof a stamp, denoting the amount of the fee, which otherwise would be payable, shall, at the expense of the party liable to pay the same, be stamped or affixed on the vellum, paper, or parchment on which the proceeding, in respect whereof such fee is payable, is written or engrossed, or which may be otherwise used in reference to such proceeding, (s. 2).

The Commissioners of Stamps and Taxes, upon the receipt of any order of the Lord Chancellor, are to provide sufficient dies for impressing or marking stamps of such denominations, and denoting such sums of money respectively as shall be mentioned in any such order, (s. 3).

The Commissioners of Stamps are to collect and pay over the stamp duty, subject to the regulations of the Lord Chancellor, (s. 4).

The Lord Chancellor to appoint persons to sell stamps, (s. 6).

The Commissioners of Stamps to allow discount or poundage on the sale of stamps as the Lord Chancellor may direct, (s. 7).

The Lord Chancellor is empowered to make orders for the allowance of spoiled stamps (s. 8).

The Commissioners are to keep separate accounts of the monies arising from stamps, and to pay the same into the Bank of England to the account of the Chancery Fee Fund, (s. 9).

Documents not to be received or used unless a stamp impressed; with a proviso for affixing a stamp omitted from inadvertence, (s. 10).

The present fees are to continue payable, until altered by the Lord Chancellor, (s. 12).

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

FIRST ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

THE Committee of Management, in this their first Annual Report, have stated,

1st. The causes and circumstances which induced the formation of the Metropolitan and Provincial Law Association. 2nd. The measures that have been adopted for establishing and extending the Association, the constitution of it when formed, and the objects it proposes. 3rd. What has been since done towards the collection of information to be submitted to Parliament, including the appointment of Sub-committees for promoting the various purposes of the Association. 4th. The labours of the Committee of Management and its several Sub-committees, embracing Reports on the Bills in Parliament relating to the Law, on the defects in Equity Procedure, and in the Common Law practice, and proceedings with the proposed remedies and improvements in each, and a brief notice on the subject of Conveyancing. 5th. Inquiries into the Office and Status of Attorney, and the grievances of the Profession. And 6th. Remarks on the necessity and importance of the Association, its present state and future prospects, and the measures recommended for furthering the purpose for which it was formed.

I. The Committee explain the circumstances connected with the *Origin of the Association*.

The public attention has for many years been directed to the state of the law and its administration. Many important changes have been made in both, some of which were highly beneficial, but others have been hazarded without sufficient inquiry into the causes which had led to inconvenience or injustice, and without adequately weighing the effect of the proposed remedies.

A course of crude, and experimental legislation, which unsettles the administration of the law, is injurious to the interests of all classes of society, and is peculiarly embarrassing to attorneys and solicitors, who have to contend with the difficulties of a fluctuating and defective practice. In common, therefore, with the rest of the community, and indeed in a much higher degree, they are interested in promoting sound and well-digested amendments of the law; and as the sole representatives appointed by the suitors, charged with the protection of their interests, and essential agents in carrying out whatever, in those improvements, or in the general administration of the law, is of public utility, they might fairly expect that their experience should be consulted, their own position be maintained and improved, and their rights as a profession protected.

The conviction that their just claims as such

agents have been neglected, or rather unscrupulously sacrificed, and that vigilance and united exertion were necessary for their defence, has long prevailed throughout their branch of the profession.

To this conviction, the Metropolitan and Provincial Law Association owes its origin.

II. The Committee then set forth the *Proceedings* adopted in *Establishing the Association*.

On the 11th of Feb., 1847, a meeting was held in London to take this subject into consideration. It was composed of a numerous deputation from various Provincial Law Societies, and a considerable number of solicitors resident in the metropolis, and they came to a resolution,—“That in the present state of the legal profession, measures should be adopted for raising the character and position, and for promoting and supporting the interests of solicitors.”

To deliberate upon these measures, and report the result to a future meeting, a committee was appointed, who collected a large mass of information on the past and present state of the profession, and the encroachments which have been made, especially in modern times, upon its rights and interests, and ultimately upon the rights and interests of the client, and the committee made their report to a general meeting held on the 25th of March, 1847.

After a full consideration of the Report, it was resolved, that an Association be formed “for the purpose of promoting the Interests of Suitors, and the better and more economical administration of the Law, of obtaining the removal of the many and serious grievances to Solicitors, and through them to Suitors, and of maintaining the rights and increasing the usefulness of the Profession.” “That the Association be called ~~the~~ Metropolitan and Provincial Law Association,” and consist of all Members of the Profession who contribute to its fund a donation of not less than 5*l.*, or an annual subscription of not less than 1*l.*” “That the business of the Association be conducted until the first Wednesday in Easter Term, 1848, by the Committee of Management, with power to add to their number, and to appoint Local Sub-Committees; and that future Committees of Management should be elected annually by the Members voting either in person or by proxy.”

The Committee of Management, on the 7th May last, issued an *Address* to all the Attorneys and Solicitors of England and Wales, explaining the objects of the Association. In consequence of this Address they received the names of a considerable number of Members, but not sufficient to justify, at that time, the adoption of immediate proceedings in furtherance of the various purposes of the Association. They therefore circulated, in the month of August last, another *Statement*, with a letter personally addressed to each Member of the Profession.

This second Appeal produced a large accession of Members both in town and country,

and thereupon a Meeting of the Committee of Management was held on the 29th October last, when adverting to the number and respectability of the gentlemen who had agreed to join the Association, and the fair probability, that when its objects were better known and appreciated, it would be still more extensively supported; the Committee felt justified in declaring that the Association was then fully formed, and a Special Committee was appointed to consider the objects which should be carried out forthwith, and to report on the course of management which should be adopted.

The Special Committee made their Report on the 22nd of November, and the Committee of Management held a further meeting on the 11th of December following, at which the Report was received and adopted; and the Committee proceeded to carry into effect such of the objects stated in the Address of the 7th May, as appeared to require the earliest attention.

The first object was the extension of the Association by promoting the establishment of District or Local Law Societies throughout the kingdom.

The gentlemen who had already joined the Association from the counties forming the Northern Circuit, being sufficient, both with regard to numbers, residence, and means of inter-communication within that district, a Sub-Committee, consisting of all the Members of the Committee of Management resident in those counties, was appointed for such of the purposes of the Association as could be effected locally; and Mr. John Sudlow, jun., of Manchester, has been appointed the Honorary Secretary of the Association for that part of the kingdom. The Committee of Management, while they have seen with satisfaction such an accession of gentlemen from many other parts, as affords the prospect that other districts will speedily be furnished with distinct Sub-Committees and Secretaries for local purposes, conceived that, for the present, the progress of the Association would be best promoted by the appointment of one Committee for the rest of the kingdom, with power to add any Members of the Association to their numbers. This power will enable them to associate with themselves those gentlemen in all parts of the country, who may be willing to assist in the formation of the Sub-Committees, and the appointment of Provincial Secretaries in other quarters; an object which the Committee of Management deemed of great importance, and are desirous to accomplish as soon as circumstances will permit.

III. They next proceed to the *Information to be collected and Submitted to Parliament.*

The next and more extensive object was to adopt means for obtaining from the profession at large, and every other available source, full information on all the points which it might be desirable to bring under the consideration of parliament, whether affecting the general administration of the law, or the peculiar grievances of the profession; and more especially to ob-

tain accurate statements of such facts as it may be important to establish before a Parliamentary Committee.

It is obvious that these important subjects could be managed only by a judicious subdivision of labour. Sub-Committees have thereupon been formed, whose attention is directed to—

1. Parliamentary Proceedings.
2. Common Law.
3. Equity.
4. Conveyancing.
5. The office and status of Attorneys, their rights and privileges; and,
6. What may be termed the grievances of the profession, particularly as it is affected by unjust and unequal taxation, by the encroachments of unqualified persons, and the unsettled and inadequate scale of fees and emoluments.

Reports upon some of these points have already been made to the Committee of Management, and will be afterwards adverted to.

A Third Address was issued by the Committee on the 11th Feb. 1848, which will be found in the Appendix.

IV. The labours of the Committee of Management and its Sub-Committees are next stated, viz., 1st. *Law Bills in Parliament.*

While these inquiries were in progress, the Committee of Management have watched the several bills introduced during the present Session of Parliament affecting the Administration of the Law, and have given to such measures their best attention.

A considerable proportion of these do not affect the interests either of suitors or practitioners, and with regard to the rest, the Committee have taken such measures as appeared to them useful and expedient.

The following measures may be briefly noticed:—

In the bills introduced by the Attorney and Solicitor-General relating to the duties of Justices of the Peace, and regulating the holding of Courts of Special and Petty Sessions, the Committee are of opinion that provision should be made for appointing qualified Attorneys only to fill the office of Clerk to these Courts.

Some of the clauses in the Bill for Promoting the Public Health were objectionable in their original form, as vesting the appointment of the Clerks of Parochial and other Public Boards in the Government, but the Bill has been amended, in this and many other particulars, whereby the appointment of such Clerks will be left in the hands of the local authorities.

The bill to amend the procedure in respect of Orders for the Removal of the Poor appears to be unobjectionable in itself, but it does not remove the grievance existing under the Poor-law Acts, by which the Boards of Guardians may appoint unqualified persons to conduct their Legal business at the Petty Sessions, though they are prohibited from acting at the Quarter Sessions.

The Bill introduced by the Lord Chancellor for empowering certain officers not now authorized to administer oaths and take declarations, affords an opportunity for suggesting an important improvement, viz. that all affidavits should be sworn and filed at the Record Office, instead of at a separate Affidavit Office, and that all Solicitors should be allowed to administer oaths, as well in town as in the country, and without any special commission. These points have been considered by the Equity Sub-Committee, and have also been attended to by the Incorporated Law Society.

There is also a bill for abolishing some of the Offices in the Petty Bag of the Court of Chancery, the provisions of which are advantageous in several respects. 1st. It puts an end to some expensive sinecures. 2nd. It enables attorneys and solicitors to practise in that office without the intervention of a side clerk; and, 3rd. The only remaining officer in this department must be a duly qualified attorney.

The bills relating to Joint Stock Companies and the audit of Railway Accounts appear to be useful measures, the former of which will probably lead to valuable improvements in the practice of the Court of Chancery, by introducing into the Master's Office a mode of procedure very similar to that in use before Commissioners of Bankruptcy.

2nd. Defects in Equity Procedure, and Proposed Remedies.

The Sub-Committee on the practice and course of proceeding in the Courts of Equity have made a Report on that subject, which has been maturely considered by the Committee of Management, and they proceed to set forth some of the existing defects which have been pointed out, and the improvements which they recommend.

The delay and expense at present attendant on proceedings in the Court of Chancery are so great as to close its doors against all except the higher classes of the community. No honourable practitioner thinks of recommending a suit unless for amounts not much under 1,000*l.*

Owing to this defect of our judicial institutions, individual wrong is inflicted without redress, and frauds as to trust property and offences against the most confidential relations may be almost said to be encouraged by law, because permitted to pass with entire impunity.

The Committee wish it to be observed, that in whatever alterations they propose, one rule they have invariably kept in view, that of opening new methods of procedure without abolishing the old, farther than may be found to be essentially necessary; such new methods to be by way of alternative, and not by way of substitution; thus leaving it to experience to determine the comparative value of each method.

With regard to the practice of the Court, they recommend,—1. That, when all parties consent, Courts of Equity shall be at liberty to

exercise a jurisdiction on petition in all cases whatsoever, so as to supersede the expenses of bills, answers, and evidence on interrogatory.

2. That the practice of allowing special cases for the opinion of the Court as established in the Courts of Law by the Statutes 3 & 4 W. 4. c. 42, s. 25, should be extended to Courts of Equity.

3. As a consequence that the practice of the Courts compelling in all cases, enquiries for parties or taking accounts should be greatly modified.

4. That where all parties consent, a primary jurisdiction should be given to the Master in all cases of equitable account, and that such jurisdiction should be absolute (subject to an appeal) or otherwise; that a jurisdiction be given to the Master to entertain the matter, without order of reference, but subject to confirmation and further direction by the Court.

4. The same principle may be usefully applied to all that class of cases on which a reference to the Master is almost of course; such as compromising suits, arrangements when the parties interested therein are not *sui juris*, proposals for marriage of wards, and for sales by private contract.

5. Also primary jurisdiction for the appointment of new trustees where there is no power of new appointment in the instrument creating the trust, or none capable of being exercised, and likewise to approve of maintenance and guardian for infants.

6. Also to grant stop orders on funds in Court, and to authorize the Master to make such other orders as may be expedient in cases where the parties consent.

To take the consent of married women to payments out of Court to their husbands.

With regard to the state of the Offices, the Committee suggest—The establishment of a thorough system of supervision of the Offices, so as to detect delays and negligence, and to supply to the Office the present want of motive to exertion, and to see that there is a sufficient Staff in every Department for the due discharge of the Official Business.

With regard to the mode of transacting Official Business.—It is recommended that the Record, Affidavit, Subpœna, and Report Offices be consolidated, and that all documents now filed in the Examiner's and Register's Office, be filed there, and that the practice as to filing Records, Pleadings, Examinations, and Affidavits be altered, so as to establish one Record Office for the Court in which the Bill, Answer, and all the other proceedings in one cause, (not the Bill and Answer only as at present,) including Affidavits and other Evidence, Petitions, Orders, Reports, and all other Official Documents be filed chronologically, in a separate and distinct form, and bound in a separate and distinct volume, and indexed by the name of the Testator, and otherwise, as well by Plaintiff's and Defendant's names, so that public reference may be easily had thereto.

A great variety of needless and expensive forms might also be dispensed with by consent, such as the production of Original Wills in Court, Confirmation of Reports, double, or even treble Petitions to procure out of Court the money of married women, Subpœnas to hear Judgment, Bills of Revivor, and common Supplemental Bills (where, at law, suggestions on the Roll answer the same object).

As to the Banking Department of the Court.—To require (as was done under the Slave Compensation Act, and is done in Ireland,) the Accountant-General to invest and accumulate Dividends from time to time, when once ordered, without application by the parties from half year to half year.

To dispense, as is done by the Accountant-General in Bankruptcy, with powers of attorney (which are only necessary to pass legal estates,) and to require him to act on letters, or such other authority as may be sufficient in law to bar the party receiving, the solicitor verifying such authority.

As to Evidence.—To extend the Common Law Rules regarding the Admission of Documents to Courts of Equity.

The Committee would also observe, that in all change of practice, the Solicitors, as the only members of the Profession personally known to, and personally selected by the Suitors of the Court, and the only parties personally entrusted by them as their confidential agents, and best acquainted with the details of practice, should in future be consulted.

3rd. *Proposed Improvements in Common Law Practice.*

The Committee have also taken into consideration the state of the Practice and course of proceeding in the Common Law Courts, and would call the attention of the Members of the Association to some of the defects and inconveniences which impede the administration of Justice in those Courts, with suggestions for improving the mode of procedure. Some of those defects and inconveniences may be removed by Rules of Court, but others will, probably, require the sanction of Parliament. In the Bill which may be brought in, if these suggestions are adopted, an Enactment should be proposed similar to that in the Law Amendment Act, 3 & 4 W. 4., c. 42; and the Chancery Act, 4 & 5 Vict. c. 52, by which the judges are authorized to make orders for the improvement of the practice and course of the proceeding which, if not revoked by a resolution of the Houses of Parliament within a limited time, have the force of an Act of Parliament.

Great inconvenience and expense are occasioned from the present practice of trying causes in Term Time, each of the several Common Law Courts sitting separately.

A larger number of causes is included in the daily list, than can usually be tried, and a second and sometimes a third day's attendance becomes necessary.

It is suggested, that a General Trial List should be made out each Term, in which the causes for all the Courts should be entered, and that one of the Judges should sit constantly to hear such trials, first in Middlesex, and next in London; and when the Courts are removed to the locality of the Inns of Court, those sittings may be consolidated.

A certain number of causes should be entered for each day, estimated by the average number usually disposed of, or rather under that average, for it is a much less grievance that the judge should rise an hour or two earlier, when he has gone through his list, than that the suitors, witnesses, &c., should be required to attend a second day. Besides, there is danger that in order to avoid the expense and trouble of another attendance unjust compromises may be submitted to or references take place, when a trial by jury is the fitter course.

It is also suggested that one Judge should sit in Term Time to hear all Motions of a practical nature without regard to the Court in which the Action may be brought.

Great inconvenience arises from the present practice respecting Motions for New Trials which are confined to the first four days of Term, unless leave be given to move afterwards.

It is suggested that Notice should be given of intended Motions for New Trials, that a List should be formed of such Motions, and that the Attorneys should enter the causes for which such Motions are to be made two days before each Term, and that the motions should then come on in rotation.

The fictions which were invented to give jurisdiction to the Common Pleas by the Writ of *Quare Clausum fregit*, and the *Quo Minus* in the Exchequer, having been abolished, and uniformity of process established in all the Courts, the time seems to have arrived for making corresponding alterations in the Action of Ejectment, and adapting the proceedings to the true state of the question to be tried. This alteration is important not only for facilitating the proceedings, but to remove the difficulty which often occurs in regard to the recovery of costs.

The valuable time of one of the Judges is taken up in hearing interlocutory applications of a routine nature in the course of an action which might be effectually disposed of by one of the Masters sitting at Chambers for that purpose, and such Master might also administer oaths and transact other formal business. At present a large mass of business is inconveniently crowded into a short space of time.

The Committee propose that one of the Masters should hear all summonses relating to the practice of the Court, reserving questions of Pleading and Evidence to be determined by one of the Judges.

Notwithstanding the improvements effected under the Uniformity of Process Act, considerable delay, expense, and inconvenience still

exist in the counties of Lancaster and Durham, where Mandates must be obtained from the Palatine authorities before the writs can be executed. This delay and expense, with the extra fees on Interlocutory proceedings have been abolished in Cheshire, and ought now to be removed from the other counties Palatine.

At present it is held that the authority of the attorney to enter satisfaction for judgment is insufficient, and that every one of several plaintiffs must give his authority. It frequently happens that one of them is abroad or not accessible at a time when satisfaction is urgently required, and delay and expense are unnecessarily incurred. It is therefore recommended that the authority of the plaintiff's attorney should in such case be sufficient.

The Committee further suggest that the Channel Islands should be made accessible to the jurisdiction of the Courts at Westminster, and that effect should be given there and in Scotland and Ireland to judgments obtained in any of the Courts here, and in like manner the judgments of those Courts should be rendered available in the Courts at Westminster as are the judgments of the Local Courts, and to a certain extent Decrees and Orders in Chancery.

Much responsibility which did not formerly exist attaches to the attorney, and much additional expense to the client, in renewing the writs to prevent the operation of the Statute of Limitations. It is proposed that instead of a renewal every four months, the writ if returned and entered on the Roll should continue in force for five years, provided it be registered in a book to be kept for that purpose, and the registry should be renewable every succeeding five years, if need be.

The Rules of Taxation between party and party which formerly subjected the successful party to a large share of extra costs have been considerably relaxed, but not to the extent which appears to be just. It is submitted that the discretion of the Taxing Officers should be extended.

The Sub-Committee have suggested various other points of improvement in the practice of the Court, but which in a General Report it is unnecessary to detail.

4th. *The Practice of Conveyancing.*

With respect to the *Law of Property and the Practice of Conveyancing*, the Committee have but little to submit to the General Meeting. No bill on these subjects has been brought during the present Sessions into either of the Houses of Parliament; but the Members are no doubt aware that Commissioners are sitting with a view to the relief of the burthens upon land. The Conveyancing Sub-Committee, the Members of which reside in distant parts of the country, are not yet prepared with any suggestions; and considering the great importance, as well to the public as the profession, of any material change in that branch of practice, and more especially to provincial practitioners, the Committee of Management recommend that some more Members of the

Association, in different districts, be added to the Sub-Committee, in order that the fullest information may be obtained on the various parts of the subject, and the opinions of the profession in general collected thereon.

[The other topics of the Report shall be stated in our next number.]

MASTER FARRER'S PAMPHLET ON THE MASTERS' OFFICES.

THE "Observations on the Offices of the Masters in Chancery, with Extracts from the Books and Notes of one of the Masters," by Master Farrer, will be read with great interest and respect by all the practitioners in Chancery. The object of the Pamphlet will be best explained by the following very judicious Preface:—

"Some apology is necessary for a publication such as the following by a Master of the Court of Chancery. Such an apology is, it is to be hoped, to be found in the present state of public feeling with regard to the Masters' Offices, in the frequent suggestions made for the purpose of altering and improving them, and, above all, in the general deficiency of accurate knowledge of the business transacted in them—a deficiency naturally arising from its very miscellaneous character and from the want of publicity in the conduct of it. To supply in some degree this deficiency, is the principal object of the following observations, as well as the extracts from my books and notes appended. The latter have been made from time to time, as the questions arose, for practical purposes only, and without the remotest thought of publication; they are, therefore, loose in language and argument. They are put forward simply and solely as illustrations of the nature of the questions which arise before the Masters, of the modes of practice by which the business in their offices is regulated, and the manner in which it is usually carried on.

"The inducement to publish these extracts in their present form, arises from my wish to lay before the public a genuine statement of what goes on in a Master's Office. To have re-cast or corrected the notes would have endangered my real object—a faithful representation of the reality.

"If these Observations and Extracts are found to contribute any useful information, however trifling, upon a department of great and growing importance, I shall have attained the object I have in view."

We shall endeavour in our next number to give a full notice of the contents of this very appropriate, well-timed, and highly important work.

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1848.*

BANKRUPTCY, AND PRACTICE OF THE COURTS.

Fiat.

What persons are liable to bankruptcy, and what persons are not liable?

State shortly the proceedings for striking a docket and issuing a fiat.

What proceedings take place at the meeting to open the fiat?

To what allowance is the bankrupt entitled under the fiat?

By whom is the solicitor to the fiat appointed?

What lien for costs has the solicitor to the fiat?

Assignees.

At what time, and in what manner, are the assignees chosen?

What interest do the assignees take in the bankrupt's property?

Does all the bankrupt's property vest in his assignees, or are there any, and what, exceptions?

What are the general duties of the creditor's assignees?

By whom are the official assignees appointed, and what are their general duties?

Are the assignees personally liable to the solicitor to the fiat if they have not funds in their hands?

The Bankrupt's Certificate.

By whom is the bankrupt's certificate granted, and does it require any confirmation?

How does the certificate affect the bankrupt?

Can an uncertificated bankrupt acquire property?

If so, can he retain it against any, and what, person?

CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

Jurisdiction.

Name the Supreme Court of criminal jurisdiction in England?

What is the exclusive jurisdiction of the Court of Queen's Bench over the other Supreme Courts of Common Law at Westminster?

State any exemptions of persons and crimes from such jurisdiction.

State the nature and jurisdiction of the Court of Quarter Sessions: its duties, proceedings in it, punishments it may inflict, and appeal from its decisions.

What is the Court of Petty Sessions—its nature and jurisdiction, the subjects usually brought, under its cognizance, and mode of proceeding therein?

Of the nature of Offences.

How are offences which are subject to indictment at the suit of the Crown, divided in the English law?

High Treason.

What is the crime of high treason?

Mention the first Statute of Treasons, and the act confirming it and repealing all intervening statutes.

State the offences, in different branches, held to be treasons, comprehended in those two first-mentioned acts.

State the offences which have been declared to be high treason since the confirming act above-noticed, and which are so at the present day.

Mention any enactments having relation to this crime in the present reign, and their purport.

Felony.

What is felony in its general acceptation?

State how the term now applies.

The punishment of death having been in many instances taken away, state some cases in which it still remains, and the statutes.

Malicious Mischief or Damage.

State the nature of malicious mischief or damage.

What is the principal enactment that provides against this class of offences?

By whom, and in what manner, is the jurisdiction under that enactment exercised?

State some of the different acts of malicious mischief which are felonies.

Riot.

State what are riots, routs, and unlawful assemblies, and the powers of justices of the peace to suppress them.

What is the mode of prosecution for these offences, and punishment on conviction?

What is the Act commonly called the Riot Act?

State its provisions, and the duties of justices of the peace under it.

Misdemeanor.

Define a misdemeanor.

State some instances of the offence, the modes of prosecution usually adopted, and the punishment.

Conspiracy.

Define the crime of conspiracy, the mode of prosecution for it, and the punishment.

Principal and Accessaries.

In what class of crimes are there accessaries? In what none?

State the several kinds of accessaries.

What was the general rule of the ancient common law as to the punishment of accessaries?

Has the Statute Law made provision for the punishment of accessaries?

Is this punishment the same as that of the principal or otherwise, and state some instances?

[* For the Questions on Common Law, Equity, and Conveyancing, see p. 206, ante. We have subdivided several of the Questions, in order that the student may more distinctly ascertain their bearing.]

Preventing Offences.

Mention the statute which regulates the exhibiting articles of the peace.

State the nature of these articles, the object of exhibiting them, and the mode of proceeding.

Magistrates' Liability.

How far are magistrates responsible for acts done in the exercise of their magisterial capacity?

What is the mode of proceeding against them civilly or criminally, and in either case what notice are they entitled to—the object of such notice, and how may they avail themselves of it to put a stop to the proceedings?

SUGGESTED IMPROVEMENTS IN THE LAW.

LANDLORD AND TENANT.

GREAT losses are continually being sustained by landlords, in consequence of tenants removing their goods, whereby the landlord is deprived of his rent.

It has occurred to me that if a clause was introduced into the act for the Relief of Insolvent Debtors, preventing tenants so defrauding their landlords from obtaining the benefit of the act until the rent was paid, it would operate most beneficially. A.

TRESPASS.—DAMAGE FEASANT.

As the law now stands, the occupier of land is entitled to distrain and impound cattle trespassing on his land. It, however, too often happens, that although the damage sustained does not exceed 1s., yet the farmer most unconscientiously puts on 20s., and the owner has no alternative but to submit to the imposition, in order to effect the restoration of the cattle, and this in a majority of cases, when the fault is the farmer's own, arising from the insufficiency of his fences. A reform, leaving the quantum of damages on the question to a magistrate, would be very useful and prevent litigation.

IMPROVEMENT OF CHURCH PROPERTY.

Various ecclesiastical bodies are lords of manors, of which copyhold lands are holden in the immediate vicinity of large towns, and capable of great improvement, if built upon.

The lords of the manor, being ecclesiastics, however, do not possess the power to grant licenses to demise for long terms to bind their successors; the consequence is, the land is let at a *grass-rent* only.

During the period Dr. Howley held the see of Canterbury, an act was obtained to remedy the defect, and to enable copyholders in the manor of Lambeth, part of the see, to grant licenses to demise for building purposes at ground-rents, on a certificate of the annual value on oath of his Grace's surveyor, so as to bind his successor. The result is an im-

mense improvement of the copyhold property held of the manor in and near York Road, Lambeth.

Prior to this act it was thought the Archbishop could not bind his successor; the consequence was, no one would build on the land held under the see, as the copyholder might be subject to pay fines on the improved rent, and not on the ground-rent only, as at present.

As such an act would be a general one no fees would be payable; the expense, therefore, would be inconsiderable. CIVIS.

TRANSFER OF MORTGAGE.

To the Editor of the Legal Observer.

SIR,—Having received instructions to prepare the transfer of a "mortgage in fee with power of sale," I consulted Bythewood's Conveyancing, vol. 8, 2nd ed., by Parken and Stewart, for a precedent, and found at page 203 a form of transfer, in which, after the assignment of the debt follows a power of attorney to sue for mortgage debt, and exercise power of sale, &c. I am, on reading this precedent, thrown into a state of perplexity.

1st, Because I have always understood that by the mere transfer of the mortgage and assignment of the debt, the covenants for payment, power of sale, and every right and power originally vested by the mortgage in the mortgagee, were transferred to and became vested in the transferee in his own right without such covenants, and power of sale being contained in such transfer; whereas in the precedent alluded to there is a power of attorney for the express purpose of enabling the transferee to exercise those powers in the name of the mortgagee.

2ndly, Because, as a power of attorney ceases on the death of the principal, I cannot see of what practical use it would be of in nine cases out of ten.

3rdly, Because the introduction of a power of attorney causes me to doubt, whether on the transfer of a mortgage, the transferee possesses all the remedies by sale, suit, or otherwise, possessed by the original mortgagee by virtue of such transfer, or whether a power of attorney to sue, &c. in the name of the mortgagee is necessary. I find that this power is not given in other precedents of minor authority.

If the right to sue, sell, &c. in his own name, vests in the transferee on the execution of a deed of transfer not containing a power of attorney, why is the power introduced into the work before alluded to? It has caused doubts to arise in my mind that would never have had existence; it might very fairly cause a student or young attorney to set no higher estimate on a mortgage debt than attaches to a chose in action, which on its assignment would require the power of attorney to enable the assignee to sue in the name of the assignor, because he cannot by law sue in his own name.

A YOUNG ATTORNEY.

SELECTIONS FROM CORRESPONDENCE.

COMMUNICATIONS BETWEEN COUNSEL AND WITNESSES.

I ADMIT that it is not usual for counsel to communicate direct with witnesses, yet it is by no means uncommon. I remember one of the leaders of the Northern Circuit, afterwards a judge, having a witness before him at a consultation.

I subjoin also an extract from Sir Samuel Romilly's Diary of 1805, where it appears, that as counsel for the then Prince of Wales, he examined Lady Douglas on the charge against the Princess of Wales.

Dec. 31.—I saw Lady Douglas with Sir J. Douglas, Lord Moira, and Lowten,* at Lowten's Chambers; Lady Douglas answered all questions put to her with readiness, and gave her answers with great coolness and self-possession, and in a manner to impress one very much with the truth of them.

SIR SAMUEL ROMILLY'S OPINION OF SERJEANT HILL.

"The circuit," (i. e., the Midland Circuit, which Sir Samuel went in 1784,) "did not, indeed, when I joined it, appear to be overstocked with talent. At the head of it, in point of rank, though with very little business, was Serjeant Hill; a lawyer of very profound and extensive learning, but with a small portion of judgment, and without the faculty of making his knowledge useful. On any subject on which you

* Mr. Lowten, it is scarcely necessary to say, was an eminent solicitor.—Romilly's Life, vol. 1, p. 446.

consulted him, he would pour forth the treasures of legal science without order or discrimination. He seemed to be of the last order of lawyers of Lord Coke's time, and he was the last of that race. For modern law he had a supreme contempt, and I have heard him observe, that the greatest service that could be rendered to the country would be to repeal all the statutes and burn all the reports, which were of a later date than the revolution."—Life of Sir Samuel Romilly, vol. 1, p. 52.

INCORPORATED LAW SOCIETY AND THE CONDUCT OF THE PROFESSION.

Doubtless many advantages have resulted from the Incorporation of this Society—the profession has most decidedly been improved by it—more however remains to be done, and it has occurred to me that if a *summary jurisdiction* were vested in the governing body to investigate any charge or complaint against any member of the profession, and to suspend, prosecute, or otherwise punish him for misconduct to a limited extent, and subject to appeal, it would be productive of great benefit, as well to the public as the profession. X. Z.

CONVEYANCE WITHOUT CONSIDERATION.

A. dies seised of a freehold estate, which he devised to his niece Anne. She has a sister Mary, married to John Cox, who persuades Anne, the devisee, to relinquish the property under a pretence that it was intended for his wife. Anne accordingly levies a fine about 10 years ago, and conveys the property to Cox and wife, but *without any consideration*. Is such a transaction valid, and can it be set aside on a bill filed in the Court of Chancery?

CIVIS.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

In re Westbrook. July 7, 1848.

LUNACY.—REMUNERATION TO COMMITTEES.

The general rule is, that a committee of the estate of a lunatic is not to have any allowance for his time or trouble, and the circumstances must be very special to induce the Court to depart from it.

THIS was a petition praying for the confirmation of the Master's report, relative to the grant of certain leases of houses belonging to the lunatic's estate, and it prayed for a reference to the Master, to inquire whether it would be proper that any and what allowance should be made to the committee of the estate for his trouble and expense in receiving the rents of the lunatic's property and managing his estate, or that he might appoint a receiver.

Mr. S. Miller, for the petition, stated, that

the property consisted principally of houses situate in various parts at a considerable distance from each other, and let to nearly 40 different tenants, at rents amounting to 1,200*l.* a year, so that the trouble and expense of receiving the rents and managing the property were very great. The committee therefore proposed that he should either be allowed a commission of 5 per cent. for managing the property, or that a receiver should be appointed. The surplus income, after providing for the allowance made for the lunatic's maintenance, was upwards of 400*l.* He cited *Esparthe Fernor, in re Errington*, Jac. 404; *In re Errington*, 2 Russ. 567; Shelford on Lunacy, 2nd ed., p. 228.

Mr. Lewin for the next of kin.

Mr. Southgate for the heir at law.

The Lord Chancellor said, it could not be for the benefit of the lunatic's estate that the committee should be paid for receiving the

rents, and asked whether, in the event of the allowance not being made, the committee would retire? His counsel not being instructed upon this point, the petition stood over.

July 15.—The petition was again brought on this morning, when Mr. Miller stated, that it appeared by the committee's affidavit that he had accepted the office at the request of his mother and sister, who were the sole next of kin, and under the impression that he was to be allowed a fair remuneration for his trouble, and he therefore should decline to act unless a proper commission were allowed so as to cover his expenses, or unless a receiver were appointed.

The Lord Chancellor said, he wished it to go forth to the public, that committees of the estate of lunatics were not to be allowed to derive any benefit from their office, and that it was against the rule of Court to allow them any remuneration. As the committee in this case stated, he was only desirous of being reimbursed his expenses, he should order a reference to the Master to inquire what expenses the committee incurred in collecting the rents and managing the property, and to make him an allowance in respect thereof, but not exceeding 5l. per cent. on the income.

Rolls Court.

Serdefield v. Thacker. May 15, 1848.

REFERENCE.—CONTEMPT.—NOTICE.

No notice is requisite before issuing an attachment to enforce a waiver where the time for answering has expired. But where a plaintiff, during a reference to appoint a receiver, made with a view of putting an end to the cause, issued an attachment, without previous notice, against one of the defendants, the Court discharged the attachment, and made the plaintiff pay the costs.

THIS was a motion to discharge as irregular a writ of attachment issued for want of an answer, and to restrain the Master from proceeding with a reference made to him under the following circumstances:—The person against whom the writ had issued was the principal defendant in the cause. The time for him to answer expired on the 6th of April; but, in consequence of negotiations for putting an end to the cause by appointing a receiver, no answer had been put in. A reference had been made to the Master to appoint a receiver, and proceedings were in progress under it, when the plaintiff, without notice, issued the writ in question. On this, one of the co-defendants objected, that the defendant against whom the writ had issued could not be heard before the Master until he had purged his contempt. The plaintiff's solicitor assented to this proposition, which seemed to have been admitted by the defendant without argument, and in consequence the present motion was made.

Mr. Roupell and Mr. Malins for the motion.

Mr. Cankrien, in the absence of Mr. Turner, contended that no notice was requisite before

the writs were issued, and therefore they were not irregular; and that the contempt was not really a good ground for stopping the proceedings before the Master. He cited *King v. Bryant*, 3 M. & C. 191; and *Wilson v. Bates*, 3 M. & C. 197.

Lord Langdale said, he was sorry to see such proceedings, but he did not think the attachment was technically irregular. Certainly it was not imperative upon a plaintiff to give notice of his intention to enforce an answer by attachment, and he did not gather that any active means had been used to induce the defendant to think that an answer would not be required. But the circumstances of the case were such as to induce a belief that no answer would be called for, and the defendants ought not to suffer for having acted on this belief. The conduct of the plaintiff's solicitor was somewhat strange: he now said that the objection taken before the Master was bad, and yet he had assented to it. But as no wilful deception appeared to have been practised, he thought it would be sufficient to discharge the attachment. The plaintiff must pay all the costs, and the defendant have three weeks' time to answer.

Vice-Chancellor of England.

In re Camac. June 10, 1847.

CONSTRUCTION OF WILL.—MAINTENANCE.

A testator directed the dividends of a sum of stock to be paid to a father for the maintenance of his daughter until she attained 21 or married with consent. She married under 21, and without consent: Held, on the construction of the will, that she was entitled to the dividends which accrued between her marriage and her attaining 21.

SIR W. CAMAC, by his will, dated in 1835, gave 8,000*l.* to his trustees, to invest and pay the dividends to his brother John Camac the elder, until John Camac the younger, the only son, and the only daughter of the said John Camac, should, as to the said son, attain the age of 21 years, and, as to the said daughter, attain that age or marry with the consent of the said John Camac the elder. "Such interest and dividends to be received by his said brother, and be applied by him in the maintenance and education of the said children, and when and as soon as his said nephew should attain such age of 21 years, or his niece should attain such age or be married with such consent as aforesaid, upon trust to pay and transfer one moiety of such sum of 8,000*l.*, or the stocks and funds in or upon which the same might be invested, unto each of them his said nephew and niece, to and for his and her own proper use and benefit; and in case his said nephew should die under the age of 21 years, or his said niece should die under that age or unmarried, then he gave and bequeathed the moiety of him or her so dying unto the survivor of them." And in case both his said nephew and niece should die under the said

age and unmarried, then he directed his trustees to pay the interest and dividends to his said brother for life for his own use and benefit. On the 10th of Jan., 1842, the niece married without her father's consent, and in August, 1843, she attained 21. The nephew died under 21. The trustees of the will paid the money into Court under the Trustee Act, 10 & 11 Vict. c. 96. The trustees of the niece's marriage settlement now presented a petition for payment of the money to them, and a question was raised whether they were entitled to three dividends which accrued between her marriage and her attaining 21.

Mr. *James Parker*, for the petition, contended that the trustees were entitled to these dividends.

Mr. *Humphrey*, contra, urged that the fund was given to the father to increase his means during the minority of the children, and he took it without any liability to account for the manner of applying it, provided he acted towards his children as a parent should do. *Hadow v. Hadow*, 9 Sim. 438. The daughter by eloping had put an end to the trust for herself by her own act, and therefore her trustees could not have any title to the dividends which accrued after that act, neither ought the income of the father be allowed to be diminished by the act of elopement. *Bowden v. Laing*, 14 Sim. 113; *Camden v. Benson*, cited in *Conolly v. Farrell*, 8 Beav. 550.

The Vice-Chancellor, after reading the clause in the will, said, there was an express direction that in a particular case, viz., of the daughter dying unmarried and under 21, the dividends should be paid to the father: the present was a case where the event contemplated did not happen, and he was therefore of opinion that the dividends remained the property of the daughter, and must be paid to the parties who were entitled under the daughter's settlement.

Vice-Chancellor Knight Bruce.

Hinchcliffe v. Westwood. Monday, March 6, 1848.

WILL.—CONSTRUCTION.—LEGAL PERSONAL REPRESENTATIVES.

A testator gave 1,000l. to trustees, upon trust for A. B. for life, and after A. B.'s death without issue, for the testator's three sons equally; and he declared that if any of the three sons should die in A. B.'s lifetime, his or their share or shares should be paid to his or their legal personal representatives. Two of the sons died in A. B.'s lifetime. Held, that the executors, and not the next of kin, of such sons were entitled to receive the shares.

THOMAS WESTWOOD, by his will, dated in March, 1827, gave 1,000l. to H. Downing and R. Westwood, their executors and administrators, upon trust to place the same out at interest, and to pay the interest, dividends, and annual proceeds thereof from time to time to Mary

Westwood for her life, and after her decease to divide the said sum of 1,000l. among her children as therein mentioned, but in case she should die without having any issue, then upon trust to pay and divide the said sum of 1,000l. equally between and amongst his, the testator's, sons, Thomas, Richard, and John, share and share alike; and in case of the decease of all or any of his said sons in the lifetime of the said Mary Westwood, then he gave the share or shares to become due upon the contingency aforesaid of him or them so dying, to his or their legal personal representatives. On the 28th of June, 1829, the testator died, leaving Mary Westwood and his three sons surviving. Richard died in March, 1836, having, by his will, dated in January preceding, appointed his wife Susannah, and J. Callum, executrix and executor thereof, and he also left an only child, his sole next of kin, surviving. John died in December, 1842, having, by his will, dated in September, 1837, appointed executors, who renounced probate, and accordingly administration, with the will annexed, was granted by the Ecclesiastical Court. Mary Westwood died in March, 1846, without ever having been married, and leaving Thomas, the only other son, her surviving. In consequence of conflicting claims having been made by the executors and the next of kin of the deceased sons to the two-thirds of the 1,000l., the executors and next of kin of Richard and John made conflicting claims to the two-thirds of the 1,000l., to which Richard and John would, if living, have been entitled. This suit was therefore instituted by the surviving trustee, for the purpose of having a declaration to whom such two-thirds belonged.

Mr. *De Gea* for the plaintiff.

Masters. W. T. S. *Daniel*, *Craig*, *Schomberg*, and *Metcalfe*, for the defendants, who cited the following cases:—*Palin v. Hills*, 1 Myl. & K. 470; *Cotton v. Cotton*, 2 Bea. 67; *Bridge v. Abbot*, 3 Bro. Ch. Ca. 224; *Price v. Strange*, 6 Madd. 159; and *Smith v. Barneby*, 2 Coll. 728.

His Honour said, that it seemed to him that the only plausible argument in favour of the construction for the next of kin was, that upon the construction for the executors, the clause was wholly superfluous, because the gift would have had the same effect if the words had been wholly omitted. It did not appear that that argument was enough of itself to displace the plain and proper meaning of such words as "legal personal representatives." The words were too strong to be so got rid of. There were here both the words "legal" and "personal" representatives. It required prodigious force to surmount the strength of the union of those two words.

Volans v. Carr. Saturday, March 18, 1848.

LUNACY.—VICE-CHANCELLOR'S JURISDICTION.

An infant entitled to dividends was found lunatic in the United States of America,

and this branch of the Court ordered the same to be paid to his mother for his support, without requiring an application to be made to the Lord Chancellor.

THE Master, by his report in this suit, found that all the plaintiffs, who were infants, and entitled to a fund in Court, had, with one exception, resided with their mother, Sarah Volans, who had maintained them, and that out of her income she was only able to do so in a very humble manner, and could not afford them an education suitable to their fortunes and expectations in life; and the Master stated his opinion that the whole income of the fortunes of her children ought to be paid to the mother until they should respectively attain the age of 21 years. The Master also found that Benjamin Volans, one of the plaintiffs, was then, and had been from his birth, a lunatic and of unsound mind, and that he was resident in the United States of America, where a commission *de lunatico inquirendo* had been duly issued and executed according to the laws of those States, under which commission he was, on the 9th day of May, 1846, duly found and declared a lunatic, and the said Sarah Volans, his mother, Benjamin Wheeler, and David Wheeler, all of Oswegatchie, in the County of St. Lawrence, in the State of New York, were duly appointed committees of his person and estate, but that no such commission had been issued against him in this country. The Master's report was confirmed.

Mr. Terrell, on behalf of the plaintiffs, applied that, under these circumstances, the income of the lunatic's share might be paid to the mother for his support. When, on a former occasion, the matter was before the Court, it had been proposed that this share should be paid to a separate account, and an application be made to the Lord Chancellor. He submitted that the Vice-Chancellor had, under the general jurisdiction, power to make the order at once, without incurring the expense of going before the Lord Chancellor.

His Honour said, that he had no doubt but that this being in a cause this branch of the Court had jurisdiction to make an order at once, without the parties having the expense of carrying the lunatic's share to a separate account, and then presenting a petition to the Lord Chancellor. The dividends of the lunatic's share might be paid to the mother, she undertaking duly to apply the same.

This undertaking was given, and the order was made accordingly.

Queen's Bench.

(Before the Four Judges.)

Doe d. The Earl of Shrewsbury v. Keeling.
Trinity Term, 1846.

EJECTMENT.—EVIDENCE.—DEED COMING FROM PROPER CUSTODY.

In an action of ejectment, W., an agent for the lessor of the plaintiff, who had in his

possession a lease for lives of certain lands, which expired in 1846, attended at the Circuit town, but was absent the day of the trial. The attorney for the plaintiff stated he cut open the carpet bag belonging to W. and took out a deed, which he produced.

Held, that there was sufficient *prima facie* evidence that the deed had come from a proper place of custody.

THIS was an action of ejectment tried at the last Spring Assizes for the county of Stafford, before Mr. Justice Patteson. The defendant had been in possession of the land sought to be recovered in this action for more than forty years, but it was contended, on the part of the lessor of the plaintiff, that it formed part of lands leased by the Earl of Shrewsbury to one John Smith, which lease (made in 1776) expired in 1846. In order to prove this lease, a person named Ward, a land agent of the Earl of Shrewsbury, was called, but did not appear. It was proved he had been at Stafford the day preceding, but no reason was assigned for his absence. The attorney for the Earl of Shrewsbury was then called, who produced the lease, which he said he had got possession of by cutting open a carpet bag belonging to Ward; he also said he had seen the lease in Ward's possession in 1846, soon after the expiration of the last life. It was contended on the part of the plaintiff, that the custody of Ward, the agent of the Earl of Shrewsbury, was the custody of the Earl of Shrewsbury himself. Mr. Justice Patteson was of opinion that it did not sufficiently appear from whence Ward got possession of the deed, and the plaintiff was nonsuited. A rule *nisi* was afterwards obtained for a new trial, on the ground of evidence having been improperly rejected.

Mr. Whately and Mr. Greaves showed cause. The deed must appear to come from the proper custody. In the absence of Ward, there was nothing to show from whence he obtained the deed, or that he was the person in whose custody the deed was properly deposited. The case rested entirely on the production of the deed, and no explanatory evidence was given of occupation or rent paid under it. *Jacobs v. Philipps,*^a *Evans v. Rees,*^b *Barnes v. Mawson,*^c *Swinnerton v. The Marquis of Stafford.*^d

Talfourd, Serjeant, and Mr. Whitmore, in support of the rule, contended that, under the circumstances of the case, the deed ought to have been admitted in evidence. In *Doe v. Samples,*^e Mr. Justice Coleridge said, "It is sufficient that the custody be one which may be reasonably and naturally explained, though not the strictly proper custody in point of law." Ward was shown to be agent for the Earl of Shrewsbury, and the deed was taken from his custody. *Rex v. Netherthong.*^f

Lord Denman, C. J. I think the evidence

^a 8 Q. B. R. 158. ^b 10 Adol. & Ellis, 151.

^c 1 M. & S. 78. ^d 3 Taunt. 91.

^e 8 Adol. & Ellis, 151. ^f 2 M. & S. 227.

adduced at the trial was sufficient to allow this instrument to be read. The inclination of the Courts in the recent cases has been in favour of the production of instruments, and I am of opinion we ought to be liberal in admitting them where no suspicion arises as to their authenticity.

Mr. Justice Patteson. I believe I was too strict at the trial in rejecting this evidence.

Mr. Justice Wightman. This instrument would properly be in the custody of the lessor, the Earl of Shrewsbury. It was produced from the custody of Ward, who was shown to be the agent in respect of this property, and I think it comes within the rule laid down by Tindal, C. J., in the case of the *Bishop of Meath v. The Marquis of Winchester*:—"These documents were found in a place in which, and under the care of persons with whom, papers of Bishop Dopping might naturally and reasonably be expected to be found; and that is precisely the custody which gives authenticity to documents found within it; for it is not necessary that they should be found in the best and most proper place of deposit. If documents continued in such custody, there never would be any doubt as to their authenticity; but it is when documents are found in other than the proper place of deposit that the investigation commences whether it was reasonable and natural, under the circumstances in the particular case, to expect that they should have been in the place where they are actually found; for it is obvious that, whilst there can be only one place of deposit strictly and absolutely proper, there may be various and many that are reasonable and proper, though differing in degree, some being more so, some less; and in those cases the proposition to be determined is, whether the actual custody is so reasonably and properly to be accounted for, that it impresses the mind with the conviction that the instrument found in such custody must be genuine."

Rule absolute.

Court of Eschequer.

Stevens v. Jervis. June 12, 1848.

INSOLVENCY.—PLEADING THE STATUTE.

A plea of a discharge under the Insolvent Debtors' Act is no bar to an action for premiums and interest falling due upon a policy of a life insurance subsequently to such discharge.

DECLARATION ON COVENANT to pay principal and interest on premiums of insurance during the continuance of the security. Breach, non-payment by defendant, whereby plaintiff was compelled to pay, &c. Plea of insolvency before payments became due. Demurrer, the plea was no answer to an action for the payment of premiums of insurance which had arisen due since insolvency.

Woolrych, in support of demurrer. The

question here was, whether this was a good plea within the stat. 1 & 2 Vict. c. 110, s. 80. He contended that the liability to pay the premiums could not fall within the words of that section, and cited *Bennett v. Burton*, 12 Ad. & E. 657, 4 P. & L. 313, S. C.; *Fletcher v. Turk*, 13 Law J., Q. B. 43, 8 Jur. 186, S. C.; *Toppin v. Field*, 4 Q. B. 386.

Ball, contra, admitted the difficulty which was presented to him by the case of *Fletcher v. Turk*, and should have considered himself bound by that case, but that no reason was there given for the judgment, which was apparently opposed to the spirit of the act. The object of the legislature was, to make all the property, present and future, liable to the claims of the creditors; the words of the 37th section were, "all the real and personal estate and effects, except the wearing apparel, bedding, and other such necessaries of such person and his family," &c.; "and all future estate, right, title, interest, and trust of such person in or to any real and personal estate and effects within this realm or abroad, which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him;" and by the 37th section, "all debts due or growing due" are vested in the assignee. This was clearly a debt growing due. [*Alderson, B.* How can it be valued?] He referred to the judgment of Chief Justice Tindal, in *Ex parte Tindal*, 8 Bing. 402. [*Alderson, B.* I have no doubt the contingency arising out of a man's life may be calculated, but how can you value the chances of his paying the money?] The defendant was not placed in any difficulty in that respect: under the statute all the property is to be given up, and the Commissioners must arrive at the value as well as they can under the 80th section, which directs that the Court shall ascertain the value.

Pollock, C. B. This point is expressly decided in *Fletcher v. Turk*: the plaintiff is therefore entitled to our judgment.

Rolfe, B. The breach here is not exactly the same, though within the same principle.

Alderson and Platt, BB., concurred.

Judgment for the plaintiff.

Court of Bankruptcy.

In re Anderson. August 1, 1848.

TRADER DEBTOR'S SUMMONS.—INSUFFICIENCY OF AFFIDAVIT.—WAIVER.

A trader summoned under the stat 5 & 6 Vict. c. 122, is bound to make any objection to the affidavit of debt upon the return of the summons, and if not taken at that time it is a waiver of the objection.

An objection to an affidavit on which the summons against a trader is founded, comes too late when the trader appears to dispute the adjudication under the 5 & 6 Vict. c. 122, s. 23.

ANN ANDERSON, who carried on business as a licensed victualler, was served with a trader

debtor's summons under the act 5 & 6 Vict. c. 122. The affidavit on which the summons was founded, stated the debt to be for goods sold and delivered, but it omitted to show that the goods were sold by the summoning creditor. The summons was returnable on the 14th June, and the bankrupt did not appear personally on that day, but attended by her attorney, who desired that the time for her appearance to the summons should be extended, on the ground that she was attending at the Old Bailey, under recognizances at a criminal trial. Upon this ground, the summons was adjourned until the 16th June, and on that day there was a second application for adjournment, which was granted till the 19th June. On the 19th June there was a further application for an adjournment, on the ground that the debtor was still attending at the Old Bailey, but the Commissioner refused to accede to this application, and the summoning creditor afterwards and in due time, sued out a fiat, the act of bankruptcy being, that the trader had failed to appear as directed by the summons.

The bankrupt having been served with a copy of the adjudication, gave notice of her intention to dispute its validity.

Mr. Ashurst now appeared as solicitor for the bankrupt, and contended, that there was no sufficient act of bankruptcy to maintain the fiat. He admitted that the bankrupt had not complied with the requisitions of the 5 & 6 Vict. c. 122, s. 13, by appearing to admit or deny the debt, but submitted that she was not called upon to do so, as the affidavit was a nullity, and all the proceedings founded on it were invalid. The 11th section of the act required, that the creditor should file an affidavit of debt in the form given in the schedule to the act, which form requires, that the debt shall be stated with certainty and precision. By the 25th of the General Rules and Orders in Bankruptcy, (Nov. 12, 1842,) the degree of certainty and precision required by that affidavit, was defined to be such as was then required in an affidavit to hold to bail. Now, it was essential to an affidavit to hold to bail for goods sold, that the goods were sold by the plaintiff, and at the request of the defendant.

He cited *Shelden v. Baker*, 1 T. R. 83; *Young v. Gattie*, 2 M. & S. 603; *Cathrow v. Hagger*, 8 East, 106; *Taylor v. Forbes*, 11 East, 315; and *Tucker v. Poole*, 9 Barn. & Cres. 543.

Here, however, the affidavit omitted the allegation that the goods were sold by the creditor, which he submitted was a fatal defect.

Mr. Commissioner Fane. I am of opinion that there is a good act of bankruptcy to support this fiat. The reason, as I conceive, why in the Common Law Courts such extreme accuracy was required in an affidavit to hold to bail was, that the debtor was not allowed to contradict it or make any defence whatever to it. It was conclusive upon him, and if the affidavit were ever so false, he was obliged to go to prison or give bail. That reason has no ap-

plication under this act, for under this act the defendant may swear, that he believes he has a good defence, (a dangerous oath by the way to be permitted,) and the creditor's proceeding drops to the ground. If, therefore, this case turned upon the "certainty and precision" required by the act, without the rules, I should, having regard to the power given by the act to the defendant to meet the case against him, by his own almost uncontrolled oath, consider the "certainty and precision" attained by this affidavit amply sufficient, particularly as the act gives a form of affidavit which this creditor has adopted. But it is said, the rules of this Court require greater precision, and for this I am referred to rules 25 and 33. I admit that rule 25 does, (as I think somewhat over cautiously,) require greater precision, but rule 33 only inflicts the penalty due to such want of precision, if the non-compliance with rule 25 be made known to and proved to the satisfaction of the Court, at the time required by the summons for the appearance of the defendant, and in the present case this want of compliance was not made known to the Court at the time required for the appearance of the defendant. Nor is this qualification unreasonable. The defendant's objection is in the nature of a dilatory plea, it has nothing to do with merits, and like other dilatory pleas, ought only to have the effect of forcing the antagonist to better his case without delay. If a defendant were to be allowed to lie by, not disclosing the mistake made by his antagonist, and keeping his own counsel till it was too late for the plaintiff to set himself right, the administration of justice would degenerate into trickery. I am of opinion that, according to the spirit of the 33rd rule, the defendant must appear and point out the objection in question at once. This debtor did not do so. But not only did this debtor neglect her duty in this point, but, in my opinion, she waived the benefit of the objection, for she attended the summons by her solicitor, and twice asked for time. She thus lulled her antagonist's vigilance to sleep most unfairly, and now, having kept her own counsel till he has involved himself in all the expenses of a fiat, she turns round upon him and makes an objection at the latest moment, which might and ought to have been made at the earliest. My opinion, therefore, is, that the objection, such as it is, comes too late, and has been waived. On the point of waiver I was referred to *Ex parte Greenstock, re Greenstock*, De Gex, 230. I entirely agree with that case, but the point of it was, that the proceeding was in a private room at the creditors' solicitors, and that the debtor had not the assistance of his own solicitor, and, as the proceeding was not in Court, he had not even the protection of the judge. This defendant attended three times before the Commissioner by her solicitor, so that the decision in that case does not apply here. On the whole, I decline to annul the adjudication.

Adjudication affirmed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

LAW OF ARBITRATION.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, pp. 169, 190.

Bankruptcy, p. 213.

Lunacy, p. 216.

Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.]

ARBITRATOR'S POWER.

See *Parties to Reference*.

AWARD.

1. *When not sufficiently certain*.—An action, together with all matters in difference, was referred to arbitration. The arbitrators awarded generally that a sum was due from the defendants to the plaintiffs. The Court discharged a rule calling on the defendants to show cause why they should not pay to the plaintiffs the sum so awarded. *Rule v. Bryde*, 1 Exch. R. 151.

2. *Evidence*.—*Perjury*.—In an indictment for perjury committed in alleging in an affidavit, that the prosecutor was indebted to the defendant in a sum of money; the award of an arbitrator, finding that nothing was due from the prosecutor to the defendant, was held to be a mere declaration of opinion on the part of the arbitrator, and therefore not admissible in evidence on the trial of the indictment, for the purpose of showing the falsehood of the demand. *The Queen v. Fontaine Moreau*, 36 L. O. 69.

See *Setting Aside Award*.

COSTS.

See *Issues*.

ISSUES.

Issues.—After issues joined in an action of trover, on the pleas of not guilty, and not possessed, "all matters in difference in the cause between the parties," were referred by order of reference to arbitration, "the costs of the cause

to abide the event." The award directed, that the said case shall cease and be no farther prosecuted, and that the defendant," &c., "shall pay to the said plaintiff," &c., "on," &c., "the sum of 145*l.*:" Held, on motion to set aside the award, that there was a sufficient finding on the issues, on which the costs might be taxed; and that that part of the award which directed a stay of proceedings might be treated as surplusage. *Hobson v. Stewart*, 4 D. & L. 589.

Cases cited in the judgment: *Stonehewer v. Farrar*, 6 Q. B. 730; *Harding v. Forshaw*, 1 M. & W. 415; 4 Dowl. 761.

JUDGMENT NON OBSTANTE VEREDICTO.

To a declaration in trespass for breaking and entering the plaintiff's dwelling-house and taking his goods, the defendant pleaded that the dwelling-house was his freehold, and because the goods were in the same he removed them. The plaintiff replied that the dwelling-house was not the defendant's. The cause was referred to arbitration on the usual terms, and the arbitrator found that issue for the defendant. Held, that his finding was final and conclusive, and that the plaintiff could not move for judgment *non obstante veredicto*. *Britt v. Pushley*, 34 L. O. 511.

NOTICE OF APPOINTMENT OF REFEREE.

An agreement to appoint referees on a day certain, includes in it the notification of that appointment by each party to the other. When therefore the appointment was made by one party on the stipulated day, but no notification was given of it to the other party till the next day. Held, that the agreement had not been complied with. *Dew v. Harris*, 35 L. O. 11.

PARTIES TO REFERENCE.

Power of arbitrator.—Disputes were pending between H. and B., and also between C. and B., concerning the same premises; and H. had sued B. in trespass for breaking and entering the said premises. By consent of H., B. and C., a judge's order was made, in the action of H. against B., that a verdict should be entered for H., with damages, subject to the award of an arbitrator, who was to direct for whom and for what sum the verdict should be entered, and should settle all difference between H. and B., and between C. and B.

The arbitrator awarded that the proceedings in the cause should cease; and that H. had good cause of action against B., and was entitled to a verdict; and he assessed the damages at 40*s.*, to be paid by B. to H. and to C., who, as the award stated, consented to become a party in the cause.

Held, a good award. *Hawkins v. Benton*, 8 Q. B. 479.

POSTEA.

Cattle-gate. — Pasture-gate. — A declaration in ejectment contained two demises in two counts, in each of which, one "pasture-gate," and one "cattle-gate" were sought to be recovered. The cause having been referred, the arbitrator awarded that the lessor of the plaintiff was entitled to recover "three certain pasture-gates." The lessor of the plaintiff entered up the verdict for "three certain pasture-gates, sometime known as cattle-gates." *Held*, that it was not competent to the lessor of the plaintiff to make such an alteration; although it was sworn, on the part of the lessor, that the names "pasture-gate," and "cattle-gate," were indiscriminately used for the same thing. *Doe d. Haxby v. Preston*, 5 D. & L. 7.

REFERENCE BACK TO ARBITRATOR.

A cause, and all matters in difference between the parties, were referred to arbitration by order of *nisi prius*, which contained a clause enabling the Court, in case the award should be disputed, to remit the matters referred to the re-determination of the arbitrator. The attorney on each side, considering the award defective, agreed that it should be amended; and subsequently a judge's order was drawn up by consent, whereby it was ordered that the matters arbitrated upon should be referred back to the arbitrator, to make such alterations as he should think fit. The arbitrator altered the award, and re-delivered it, without giving notice to the parties of his intention to do so, and the amended award did not recite the judge's order: *Held*, that as neither party requested the arbitrator to hear fresh evidence, he was not bound to give them notice. Also, that such amended award need not recite the judge's order. *Baker v. Hunter*, 16 M. & W. 672; S. C. 4 D. & L. 696.

REFEREE.

See *Notice of Appointment of*.

RESERVED POINTS.

See *Submission*.

SETTING ASIDE AWARD.

1. Where a rule *nisi* to set aside an award had been granted on the last day but one of Term, but was stayed in the office, because the agreement of reference had not been made a rule of Court, of which it appeared that the parties were aware at the time of making the motion, this Court refused in the following Term (the agreement of reference having been in the mean time made a rule of Court,) to antedate the latter rule as of the day when the motion to set aside the award was made, and to draw up the rule to set aside the award, on reading the rule making the agreement of reference a rule of Court; although it appeared that the party moving had no copy of the agreement, which was in the hands of the opposite party, who had refused to make it a rule of Court in time. *In re Ross*, 4 D. & L. 648.

2. *A.*, one of the parties to an award, had reason to believe that *B.*, the opposite party, in whose hands the original deed of submission

was, was going to make it a rule of Court, and *B.*, in point of fact, intended to do so, and was prevented by accident only. On the last day but one of the Term next after the making of the award, *A.* obtained a rule *nisi* to set aside the award, and also a rule *nisi* for *B.* to file the submission with the Master, in order to its being made a rule of Court as of the day on which the motion to set aside the award was made; and that the rule to set aside the award should be drawn up on reading such rule; and the Court, in the following Term, made the rule absolute. *In re Midland Railway Company and Heming*, 4 D. & L. 788.

Cases cited in the judgment: *In re Keymer*, 3 Dowl. 98; *Bottomley v. Buckley*, 4 D. & L. 157.

3. *Award. — Motion to set aside.* — A railway company requiring land, the vendor appointed *A.* as his arbitrator. *C.* was appointed by the company, but he had before made an offer on behalf of the company to the vendor for the land. *D.* was chosen umpire. The vendor afterwards discovered that his arbitrator and the umpire were surveyors employed, and one of them a shareholder, in a company materially interested in the success of the company treating with the vendor. On a motion to set aside the award, *Held*, that there were not sufficient judicial grounds for so doing. *In re Elliott, Ex parte the South Devon Railway Company*, 36 L. O. 284.

See *Issues; Submission confined to Verdict*.

SUBMISSION CONFINED TO VERDICT.

Power to reserve points. — Time for moving to set aside. — Where a cause, and all matters of difference in the cause, only, are referred by order of *nisi prius*, the verdict being ordered to stand for a sum named, subject to the award, and the award is that the verdict shall stand for a certain sum, an application to set the award aside must be made within four days of notice being given that the award is made, unless some excuse for delay be shown, such as would, in the case of a verdict, induce the Court to allow a motion for a new trial after the expiration of the usual four days.

The same rule was held applicable where the arbitrator was directed to state for the opinion of the Court such points of law as the parties should raise, and he awarded a verdict for the plaintiff, unless the Court should otherwise order, for a sum named, stating points, and directing that the verdict should be reduced or increased, or a verdict be entered for the defendant on certain issues, according to the decision of the Court; and the defendant afterwards moved to set the award aside, or to enter a verdict for the defendant on some or all of the issues, upon matter apparent on the face of the award. *Panton v. Great North of England Railway Company*, 8 Q. B. 938.

Cases cited in the judgment: *Anderson v. Fuller*, 4 M. & W. 470; *Macarthur v. Campbell*, 5 B. & Ad. 518.

UNCERTAINTY.

See *Award*, 1.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, AUGUST 19, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

PROGRESS OF CHANCERY REFORM.

DELAYS IN THE MASTERS' OFFICE.—
MASTER FARRER'S PAMPHLET.^a

OF all the projected law reforms which have come under public or professional consideration, there are manifestly none more important than those of our Courts of Equity. The subject of Chancery Reform has indeed, at various periods, as well before as during Lord Chancellor Eldon's time, attracted an unusual share of attention; and it has by no means diminished in importance in these latter days. The amount of the property involved in proceedings in the Court of Chancery has rapidly increased, until it has attained a magnitude that could not fail to render the machinery of its management a matter of national concern.

Notwithstanding, however, the vast increase in the total amount of the fund under litigation, it appears to be a remarkable fact that the number of suits yearly instituted in the Court does not exceed that of the time of Lord Hardwicke. It is contended, therefore, that if the crying evils of delay and expense could be removed, or sufficiently reduced, the quantity of business would be extended tenfold, and that at present there is virtually a denial of justice

in all cases where the property in question does not amount to 500*l.* or 1,000*l.* It is consequently urged that a vast multitude of grievances, relievable only in the Courts of Equity, remain unredressed or are unfavourably compromised;—that, on the one hand, just claims are partly or wholly abandoned;—and on the other, unjust demands prevail in order to avoid the greater evil of a heavy visitation of costs.

Looking at the progress of Chancery Reform, it will be recollected that in Lord Eldon's time the grievances of the suitors in Equity were often made the subject of party attack in the Houses of Parliament; and perhaps the determined and successful resistance with which the Lord Chancellor then met all projects of amendment, was partly, if not principally, owing to a Conservative feeling that reforms in Chancery, like reforms in parliament, were doubtful, and often dangerous in the result. When Lord Lyndhurst became Chancellor, it was deemed expedient to sanction various alterations in practice, which were carried into effect by the General Orders of 1828. These were followed by other changes under Lord Brougham in 1831 and 1833; under Lord Cottenham from 1837 to 1841; by Lord Lyndhurst again from 1841 to 1843; and finally, under the same Chancellorship, aided by Lord Langdale, in 1845.

For many years past, divers suggestions have been made by eminent practitioners, through the medium of the *Legal Observer*, for effecting useful improvements; and the Incorporated Law Society has assisted in

^a Observations on the Offices of the Masters in Chancery, with Extracts from the Books and Notes of one of the Masters. London: Stevens and Norton, 1848. Pp. 129.

several important alterations which have been effected either through acts of parliament or orders of Court. During the last few years, the Law Amendment Society has taken an active and prominent part in the consideration of different branches of Chancery reform, both in the constitution and practice of the Court. Several reports from that society, containing numerous propositions for the amendment of the course in Chancery, have been published in the Law Review, and have at length excited attention in quarters which seemed hitherto to be almost inaccessible.

We deem it highly fortunate for the progress of useful and practicable reform in the Court of Chancery, that Mr. Farrer, one of the elder Masters of the Court, and so justly respected as he is, should have been induced to take up the pen and submit to the profession his views of the existing evils, and the remedies which are, or may be, proposed for their removal or palliation. None deny that proceedings in Chancery, compared with Bankruptcy or Common Law, are dilatory and expensive; but this state of things is not without a cause. It is manifest that the paramount difficulty in the way of diminishing both delay and expense in Chancery proceedings, consists in the necessity, or supposed necessity, of having every party represented before the Court, who is in any respect interested in the matters at issue in the suit. The pamphlet before us sets forth that—

“The Masters in Chancery are, as the heads of their offices, bound to despatch the business as it is brought before them; but certain forms and rules of practice exist here as in the Courts above, and the principle, ‘that the parties are most competent to conduct their own business’ still prevails. If a cause be delayed in its prosecution in the Master’s Office, no blame attaches to him, provided he has acted with proper despatch in the work brought before him; he must be kept distinct from that part of the system which, by the manner of working it, has caused the delay; he alone has not power to compel parties to proceed, if they choose to be inactive; if they will not use the rules of practice to drive each other on, the Master has no power to force them to go on. Every solicitor who practises in the Masters’ Offices will admit the correctness of this view of the subject; indeed Mr. Field, a solicitor in great business, in his pamphlet on the defects in the Offices, throws the blame of delay chiefly on the solicitors, for he writes: ‘I willingly admit that the fault of delay rests greatly, in chief part I would say, with the solicitors.’ The public, however, and especially parties to causes in Chancery, hear of the delays in the Masters’ Offices, and not separating the conduct of the

Master from the conduct of the practitioners in his office, the former is considered as the offending party.”

Mr. Farrer observes, however, that it is only just to the solicitors to state that culpable delay is frequently believed to exist, when in truth it is caused by particular circumstances, over which the solicitors have no control. Some of these circumstances, he says, are—

“1st. Abatement of the suit—

“By the deaths of parties leaving wills or intestate.

“By the births of children or the bankruptcy, insolvency, lunacy, marriage, and marriage settlements, &c. of parties to the cause subsequently to the reference to the Master.

“In such cases proceedings are stopped, because it is necessary to file bills of revivor and supplement for the purpose of bringing heirs at law, executors, administrators, children, assignees, committees, trustees, &c. before the Court, and obtaining decrees reviving the cause, and directing the Master to proceed. Until the supplemental decree is obtained no proceeding can be taken.

“2nd. Endeavours (frequent after decree) to compromise.

“3rd. Inability to meet the costs, which often obliges both plaintiff and defendant to remain inactive; when the cause has reached the Master’s Office all parties are often in a state of exhaustion.

“4th. The absence of parties and witnesses abroad.

“5th. The skilful use of the rules of practice, to create delay when one party wishes to gain time and impede the proceedings of the other.

“6th. The difficulty in procuring evidence, especially in some pedigree causes.

“7th. It will sometimes happen that after a cause has been fought through until it is referred to the Master, and some proceedings have been had before him, the parties find that there is little to contend for; supposed large balances turn out trifling in amount, alleged breaches of trust are explained away, no party is anxious to push on, there is little to stimulate, the cause lingers slowly on, and sometimes is abandoned by silent mutual consent.”

To show that all persons interested must be parties to the suit, the learned author gives the following as an example:—

“Suppose Mr. Dives, carrying on an extensive mercantile business, possessed of stock in trade, real and personal estate, to die, leaving a widow and children, and having made a will, whereby he bequeathed the residue of his personal estate (after payment of debts, &c.) to trustees, upon trust, to pay a jointure to his widow, portions to his younger children, and subject thereto, upon trust, to invest the residue in land, and to convey and settle the same upon his sons successively, in strict settlement, in the same manner as he devised his real estates, and he

devises his real estates in aid of his personal estate, charged with the jointure and portions, and subject thereto, upon trust, to be settled upon his sons successively, in strict settlement. He makes *A.* and *B.* executors, *C.* and *D.* devise in trust. He leaves *E.*, his widow *F.* and *G.*, sons, and *H.* and *I.*, daughters. Upon his death *A.* and *B.* prove, and proceed to act, getting in the personal estate, paying debts, &c.; *C.* and *D.* enter into possession of the real estate. After having gone to a certain extent in executing the duties of executors, *A.* and *B.* find themselves involved in difficulties in ascertaining the credits and debits of their testator, and getting in his assets, and the personality appears to be insufficient. They are driven into Chancery for protection. A creditor is found to file a bill on behalf of himself and all other creditors of the testator. He is plaintiff; *A.* and *B.*, *C.* and *D.*, *E.* *F.* *G.* *H.* and *I.*, and *K.* the eldest son of *F.*, the first tenant in tail representing the inheritance, are defendants. They must all put in answers. A decree must be made, referring the whole matter of the cause to the Master. In such a suit *A.* and *B.* have to account for and justify all their receipts and payments; *C.* and *D.* to account for rents and profits received by them, and the application of them. On every item in the account of *A.* and *B.*, the plaintiff and all the other defendants are entitled to attend. Upon every claim of a creditor brought into the Master's Office, plaintiffs and defendants all attend. On every proceeding, in respect of the real estate at least, five parties attend, namely, plaintiff, *A.* and *B.*, *C.* and *D.*, *E.* and younger children, *F.* and *K.* tenant for life and first tenant in tail. And there may be more separate attendances, if some of the parties find it expedient to attend by different solicitors.

"It is seen at once what unavoidable causes of delay must arise in such a state of things. The difficulty is increased by the ignorance in which the executors and parties are upon the testator's affairs, by the want of the personal presence and information of the testator."

This necessity of bringing forward a multitude of parties does not exist in proceedings in Bankruptcy, nor generally at Common Law, the expedition and facilities of which are held up to commendation, and contrasted with the slow progress of a suit in Equity. The Master aptly puts the case thus:—

"Suppose, instead of dying, Mr. Dives committed an act of bankruptcy. A creditor takes the usual summary proceeding under which he is declared a bankrupt, the law vests all the property of Dives immediately in the official assignee. In taking the accounts, and winding up the affairs, and distributing the assets amongst creditors, there is no embarrassment in the attendance of parties. The commissioner, assisted by the official assignee, conducts the whole business, allows or rejects creditors' claims, ascertains what are the liabilities, and

what is the property, and what are the credits and rights of the bankrupt, and has the bankrupt at hand to give information about his property and affairs whenever it is wanted. It is only necessary to ascertain what property and credits belong to the bankrupt himself. In his real property he may have only a life estate; it may be subject to a jointure and other charges; but these are unaffected by the bankruptcy. The only inquiry is, 'What is the bankrupt's estate?' Meetings of creditors for some purposes may be required, but these create little obstacle in, or rather facilitate, the winding up of the affairs."

Further on in the pamphlet the supposed power of the Masters to compel the parties to proceed is well exemplified. Amongst other statements, we extract the following relating to the 53rd, 54th, and 55th orders, of 1828, enabling the Masters to proceed *ex parte*:—

"The initiative is with the parties, who seldom or ever ask the Master to proceed *ex parte* to the allowance or disallowance of a contested state of facts, &c. To do so only multiplies proceedings. Suppose the Master to allow a state of facts of *A.* *ex parte* and that no person is affected by it but *A.* and *B.* *B.* afterwards comes to the Master, accounts for his absence, tells the Master, that the allowance is in his belief wrong in law, or that the state of facts and evidence are erroneous or insufficient. The Master knows, that much more inquiry and delay would be caused in the form of objections and other proceedings, by refusing to review his allowance than by granting a warrant to review.

"Suppose again the Master to allow *ex parte* a state of facts of *A.*, which not only affects the interests of *A.* and *B.*, but has also a bearing upon the interests of other parties in the cause. *B.*, stating reasons for his default, asks for a warrant to review; the other parties second him. *A.* attends and admits, that if the Master refuses to review, there would no doubt be objections left, and exceptions taken to the Master's report, and that the whole case might be sent back by the Court to the Master. Thus the Master finds, that if he refuses the warrant to review, he runs the risk of making a report based on error, and that too upon his own responsibility, the parties in the cause, except *A.*, pressing him to have the cause opened, and properly argued, and *A.* scarcely asking the Master to refuse. The truth is, that *ex parte* hostile proceedings are so unsatisfactory, indeed injurious, that the Master is seldom, if ever, asked so to proceed."

Explanations are likewise given of the difficulties which arise, almost of an insuperable kind, in transferring the conduct of the proceedings under the 55th Order from a dilatory to an active party in the suit. The "Observations" next describe the chief duties of the Master, which are

clearly and accurately detailed, and those of the Chief Clerk are thus stated:—

“The office of Chief Clerk is an office of great importance; he ought to be a gentleman of considerable legal and practical knowledge, of gentlemanlike manners, conciliatory but firm, industrious and accurate; (qualifications of which the writer of these observations has the benefit in his present Chief Clerk;) he is in the same position relatively to the Master as the Master is to the Court; as the Master’s reports are (generally) subject to confirmation by the Court, so all the proceedings before the Chief Clerk are subject to the Master’s control. For instance, the passing the accounts of receivers, executors, trustees, &c., begin before the Chief Clerk; if any items are disputed, he makes a query to each item, and then a warrant upon queries is taken out for the Master, and he decides upon them; so if in preparing a report any difference arises, which the Chief Clerk cannot settle to the satisfaction of the parties, they in the same manner attend the Master, and he settles the matter in dispute. The Masters are in constant communication with the Chief Clerks upon the business in progress, and derive valuable assistance from their experience and knowledge.”

A considerable part of the “Observations” is devoted to the consideration of the suggestions for altering the mode of proceeding made by “The Society for the Amendment of the Law.” It is to be regretted that the Master was not aware of the Memorial to the Lord Chancellor by the Metropolitan and Provincial Law Association until the close of his work.^b That memorial contains many important suggestions on various branches of practice, and especially on the course of proceeding in the Masters’ Offices. We hope the learned writer, in another edition, will advert to those suggestions,—made as they are by a committee of solicitors of great experience, ability, and extensive practice.

Our limits will not permit us at present to enter upon the suggestions of the Law Amendment Society, and the difficulties or objections appertaining to them, as stated in the work before us. We shall endeavour hereafter to return to the subject, and, for the present, shall notice how far Mr. Farrer thinks that certain alterations may be *practically* and *usefully* extended. He admits it is fair to inquire whether they who make observations on the suggested amendments have any *remedies* to propose for the ills complained of; and he proceeds to state what may at least be considered as *palliatives*.

See the Memorial, p. 200, *ante*, (July 8).

The general principle of the Courts, he observes, is, that the Master shall only make the inquiries, take the accounts, and execute the directions in their decrees and orders, and that no proceedings shall *originate* in the Masters’ Office. This principle has of late years been relaxed, and the Master inclines to think that such relaxation may be usefully extended. He notices that—

“After a decree and reference to the Master it often becomes necessary or expedient
 “To appoint a new guardian or guardians;
 “To increase maintenance;
 “To appoint a new receiver, consignee, or manager;
 “To appoint new trustees;
 “To bring or defend actions;
 “To repair farm and other houses, &c. or erect new buildings;
 “To drain or make other permanent improvements;
 “To cut down timber and thin plantations;
 “To bore for, open, and work mines;
 “To enter into contracts for purchase or sale of property;
 “To make payments for the advancement in life of wards of the Court, by the purchase of commissions in the army, fitting out for the navy or sea service, providing apprentice fees, &c. &c.;
 “To approve marriages of wards of Court and proposals for settlement.
 “In all these and other cases, it is necessary” to present a petition to the Court supported by affidavit, upon which the Court makes an order of reference to the Master, nearly always, as a matter of course; the order is drawn up and left in the Master’s Office, a warrant is taken out to obtain the Master’s directions as to proceeding on the order, the Master directs a state of facts supported by evidence to be left, which being left, the Master proceeds, and having allowed or disallowed the proposal, a report is made, and this goes before the Court for confirmation or by way of appeal.”

Mr. Farrer states that he agrees in opinion with those who suggest that in the above-mentioned and similar cases the proceedings should commence by leaving states of facts, proposals, &c., in the Masters’ Office, without a previous petition to, or order of, the Court; and he says—

“If the master should consider the state of facts and proposal proper, he would allow it, and make his report to the Court, stating his opinion, and submitting it to the Court; if he should think the proposal improper, then he would disallow it. In either case any party might go to the Court if dissatisfied with the Master’s decision. This would very rarely occur. This change would effect,

undoubtedly, some saving in time and a large saving in costs. If it be objected, that the Court ought in the first instance to judge of the propriety of the inquiry and proposal—that the Court is properly jealous of any proceedings without its previous sanction and direction—the answer is, that this exercise of authority by the Court is unnecessary, that it is in fact frequently nominal and formal, and that this jealousy is now misplaced and inconsistent with the responsible duties which the Masters perform, and the confidence which the Courts practically place in them.^c

There may also be cases in which, without any *previous decree*, the proceedings might commence in the Masters' Office:—

“For instance, on petitions to appoint guardians and allow maintenance without suit—on inquiries, whether *A. B.* is an infant trustee or mortgagee—whether *C. D.* is a trustee or mortgagee within the meaning of the statute, &c., and whether he is within the jurisdiction; in this class of cases the Courts make references, as almost of course, to the Masters, not to find and report facts only, but to report whether *A. B.* and *C. D.* are trustees within the meaning of the statutes. In their reports the Masters having stated the facts, necessarily, in obeying the order, certify their opinion upon the law. If the Master simply stated the facts without his finding, that is, his opinion upon the law, the report would be sent back to him with an order to review, in other words, to report his opinion.

“Again, an order might be made giving the Master leave, in all cases, to state special circumstances in his report; he cannot do so now without leave of the Court given by the decree or order.”

As to delay, no one of the existing orders, (says the writer,) nor any of the plans yet proposed, supplies a sufficient remedy. The order enabling the Master “to fix the times for proceeding” approaches it.

“If the Masters are considered to be responsible for the diligent working of decrees, &c., the authority thereby vested in them must be enlarged; a general power must be given to them to control or superintend the proceedings; they must be authorized to direct warrants to be taken for the attendance of all parties, or any one party, for the purpose of inquiring into causes of delay, where proceedings are di-

^c “In some few instances, special orders have been made by the Court, giving leave to lay proposals in the first instance before the Master, such as proposals for cutting timber and bringing actions. In cases of commutation of tithes, a general order has been made under which the proceeding is directed to begin in the Master's Office without a previous petition to the Court—proposals for lease also commence at once before the Master.”

latory, and directing the time within which the reference shall be worked, so that the Master may either keep the parties active, or ascertain the causes of delay and record them. Under existing regulations the Masters make an annual return of all causes and matters in their respective offices, shewing the state of proceeding upon references to them; but very little if any benefit results from these returns. Although it may appear, that in certain causes no proceedings for a long time have been taken, there the matter ends; it is the duty of no one, it is not within the authority of any one, unless of the Judges of the Superior Courts, to inquire into the causes of delay.

“Great objection will justly be made to such interference as is here suggested with the principle ‘that the parties know best how to conduct their own causes;’ but the interference is suggested upon no other ground than that it appears to be the only means by which the public can be satisfied that the alleged delay does not exist, or, if it does exist, that the cause is not to be found in any dilatoriness on the part of the Master; to which may be added the probability, that if such power of control or superintendence be given to the Masters, the parties themselves will be influenced by it, and will be stimulated to diligence in prosecuting references in their Offices, and the exercise of any power that may be vested in the Master will probably be but little called for in practice. Assuming this to be a probable result, it is better to modify and improve the existing system, than to introduce new forms and modes of procedure, or make any great changes. Great changes must be attended with great present inconveniences and risks; they might in process of time, after undergoing modifications, the results of experiment, be made to work well; but this could only be effected after long trial. Suppose, however, that such great changes failed! All legal and judicial systems are the gradual growth of very many years; no system was ever perfect on the sudden. Important ameliorations^d have taken place in the practice in the Master's Office. The existing orders and rules of practice are well calculated for the ends proposed, and would produce satisfactory effects, if they were put in force for the purposes for which they were made, and in the spirit which the Judges, by whom they have from time to time been introduced, wished to infuse into the proceedings; they contain in themselves all that is requisite for plaintiffs or defendants; to both are given powers, enabling them to work the references expeditiously; neither class can be inactive if the other will use the powers possessed by it. Further improvements may be introduced, especially in the mode of working the references, as has been stated in a former

^d “It is impossible to express in too strong terms our sense of the wisdom which dictated the abolition of fees as the remuneration of the Masters' and Chief Clerks.”

part of these observations, by compelling a more strict form of pleading, and more continuous proceedings, and in some other parts of the practice; but still the system itself is well adapted to obtain the end proposed by it. It may justly be said that the Master's Office is like a great machine, composed of several parts; each part is entrusted to a peculiar workman; if every workman performs his duty skilfully, all the powers are put into action, and the machine works well; but if any workman neglects his duty, then the operations are impeded, and loss of time and other inconveniences necessarily follow. In the latter case the remedy is to improve the machinery by introducing such a power as shall influence the operation of the separate parts, and make each part do its proper work in due time; such a power, so controlling the workings of the several parts, would produce beneficial results, and all real cause for complaining of the Masters' Offices would cease. There seems no other means by which that power can be given than by investing the Master with more authority than he now possesses.

We have thus selected Master Farrer's views of such amendments in practice and additions to the course of proceeding in the Masters' Offices as appear to him to be beneficial to the administration of justice in the Courts of Equity, and we shall return to the discussion of other parts of the subject at an early opportunity.

THE CIRCUITS.—CONSTITUTION OF JURIES.

THE Circuits are drawing fast to a close, and, upon the whole, the amount of business has been greater than was anticipated. Indeed, in nearly all the counties the number of criminal cases for trial exceeded the usual average, whilst the County Courts Act does not seem yet to have operated materially in reducing the number of civil causes for trial at the Assizes. In the numerous instances in which the Superior Courts have a concurrent jurisdiction with the County Courts, under the 9 & 10 Vict. c. 95, s. 128, suitors, as might be expected, find many reasons for preferring the former jurisdiction. Amongst other grounds of preference, we frequently hear it remarked, that the County Court judges constantly order every debt, whatever may be its nature or amount, to be paid by small instalments, whilst in the Superior Courts, if the debt be of an ordinary description, the judge makes an order for speedy execution, and if the defendant be in solvent circumstances, the whole amount is paid without delay. The only ground upon which any

suitor who has the option elects to proceed in the County Court, rather than in one of the Superior Courts, is the consideration of expense, the difference as regards which, though not so great as may be supposed, is undoubtedly considerable. We look forward, however, to the period, we trust not very remote, when the costs of proceedings in the Superior Courts will be sensibly reduced by the abolition of Court and many other fees.

The composition of juries in country towns, and the relative qualifications of special jurors and common jurors, have become the subject of general discussion amongst those whose professional engagements take them to the assizes; and the opinion begins to acquire strength, that the distinction between special and common juries should be abolished, and that the administration of justice would be improved if persons of superior education and intelligence were mingled with those who now sit on common juries.

It is not proposed, as we understand, to raise the qualification, or to exclude from juries any persons now eligible to serve, but simply to extend to every suitor, without increased expense, the benefit which any suitor may now obtain who is willing to incur the expense of striking a special jury. Profoundly impressed with the social and political importance of jury trial, and desirous of preserving the institution in all its integrity, we are, nevertheless, forced to admit, that the classification, somewhat capriciously adopted in practice, into special and common juries, does not add to the efficiency or authority of the tribunal, and that it would give increased weight and certainty to the decisions of juries, if the numerous class of persons whose services are exclusively required when special juries are struck, were called upon to serve indiscriminately with those who ordinarily discharge the functions of common juries. In addition to the more obvious advantages which would arise from the infusion of a higher degree of education and intelligence into the composition of juries, we should hope it would tend to diminish the number of cases in which it is now thought necessary to allow what are called "new trials," an evil of increasing magnitude in the procedure of our Common Law Courts.

As connected with the subject of juries, we may mention, that the Lord Chief Baron has, we think judiciously, determined to deviate from the practice which for some

time has prevailed at the assizes, with respect to the order in which special and common jury causes are tried. It has been usual, as many of our readers are aware, on the first or some early day of the assizes, to fix particular days for the trial of special jury causes, and on the day so fixed the special juries have been disposed of, although it frequently happened that common jury causes previously entered remained untried, and were postponed to a later period of the assizes, a postponement necessarily attended with great expense to the parties, and inconvenience to those summoned from the common jury panel. At the Surrey Assizes, now depending at Guilford, there was an entry of 94 civil causes, of which 15 were special juries, and the Lord Chief Baron took an early occasion of intimating that he did not propose to give those who had arranged to have their causes tried by special juries any advantage by appointing particular days for the trial of such causes. The special jury cases, like the common jury, would be tried in their order, without distinction or preference. The result of this arrangement, if it were universally adopted by the judges on Circuit, would be to discourage the practice of trying by special juries, and to place those summoned on either description of jury on a greater equality as regards their attendance in Court. In agricultural districts, a large proportion of persons summoned to serve on common juries are necessarily farmers—the same persons serve on juries at the criminal side—and perhaps no class of persons could be named whose absence from their own localities is attended with more inconvenience and loss, particularly during the harvest month. Every consideration, consistent with the due and patient administration of justice should be extended to persons of this class, and it is not unreasonable to suppose that they would submit more cheerfully to the sacrifices they are called upon to make, if they were more directly associated with the gentry of the country in the discharge of this most important public duty. The whole subject of the qualification of jurors, their attendance at the sittings and assizes, and the remuneration to which they are entitled by law, is deserving of serious attention. We have no doubt that the present system is susceptible of much improvement, upon all those points, and that the duties of jurymen may be rendered less onerous and inconvenient to individuals, without impairing in any respect the efficiency of the tribunal, or dimi-

nishing the respect and confidence with which we hope ever to see trial by jury regarded by Englishmen.

CHANCERY PROCEEDINGS FURTHER REGULATION.

A NEW BILL has just been introduced by the Lord Chancellor for putting all the remaining officers of the Court on salaries instead of fees.

The preamble recites 3 & 4 W. 4, c. 94.

The Master of Reports and Entries is to perform such duties as the Lord Chancellor may direct, (s. 1).

The Lord Chancellor to issue orders for carrying this act into effect, (s. 2).

Salaries in lieu of fees to be paid to the officers of the Lord Chancellor and Master of the Rolls, (ss. 3, 4).

The fees heretofore received to be placed to the "Suitors' Fee Fund Account," (s. 5).

Salaries to be paid to the clerks employed in the Secretaries' Office at the Rolls, (s. 6).

3 & 4 W. 4, c. 94, relating to the appointment of Chief Clerk of Master, to be repealed; and none but solicitors of 10 years' standing to be appointed Chief Clerk of the Master; and to be of not less than seven years' practice immediately preceding the appointment, (ss. 7, 8).

The Chief Clerk to be struck off the Rolls, (s. 9).

The Solicitor to the Suitors' Fund to perform such duties as the Lord Chancellor may direct, and not to act as solicitor, except in the duties of his office, (ss. 10, 11).

Appointment of clerks to assist solicitor to Suitors' Fund, (s. 12).

The Salaries of officers of the Lord Chancellor and Master of the Rolls to be paid out of the Suitors' Fee Fund, (s. 13).

The Salaries of officers to commence from the date of appointment, (s. 14).

Alteration of quarterly days of payment of salaries, (s. 15).

Repeal of allowances for copying; and the salary of the Masters' Junior Clerk to be increased to 400*l.*; and the Taxing Masters' Clerks to 350*l.*, (s. 16).

The Lord Chancellor may order pensions to be given to retiring officers, (s. 17).

Pensions to disabled officers, (s. 18).

The Lord Chancellor may order payments for providing Court-Room, &c., (s. 19).

Act to commence 2d Nov., 1848, (s. 20).

The Lord Chancellor may postpone the commencement of the Act for six months,

CHARITY TRUSTS' REGULATION.

THIS bill, amended, as we stated last week, is proceeding forward in the House of Commons. The power of the County Courts, it will be recollected, is limited to cases not exceeding 30*l.* a year; and the authority to inquire under special orders from the Court of Chancery into charities above that sum, and not wholly or partly supported by voluntary contributions, is not to be exercised within 20 miles of London.

As we at first briefly noticed, there still remains the important question, as well for the public as for practitioners, *what are to be allowances for costs in such cases?* They are not, of course, to be limited to 10*s.* or 15*s.*, as in actions for debt; but is the amount in any respect to be regulated by that miserable and impolitic scale? The solicitors, whether of the trustees of charities, or of parishes seeking an investigation into the amount and application of the fund, are always willing to moderate their charges where the property in question is of small amount; but it cannot be expected that respectable practitioners will be induced to attend to this branch of business, if the remuneration is to be limited to the Small Debt Scale.

The danger will be, that cases of this sort will fall into the hands of an inferior class of persons, who, it is to be feared, will remunerate themselves in an irregular form and by means which the solicitors in general will disdain to adopt, and the profession, we apprehend, will thus be lowered and the public interests suffer. We trust that the clause in the bill, authorizing the making of rules and orders will be found sufficient to secure adequate professional remuneration, but if not, that it will be properly amended.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the *present* Session of Parliament, printed in this and the last volume of the *Legal Observer*, are as follow:—

Extending Time for making Railways, vol. 35, p. 204.

Regulating the Queen's Prison, p. 356.

North American Passengers, p. 381.

Crown and Government Security, p. 500.

Oaths in Chancery, vol. 36, p. 7.

Stamp Duties Assimilation, p. 8.

Trial of Controverted Elections, p. 23.

Removal of Aliens, p. 182.

Annual Indemnity, p. 221.

Suspension of the Habeas Corpus Act (Ireland), p. 280.

Poor Removal Orders, p. 295.

COMMONS INCLOSURE.

10 & 11 VICT. c. 27.

An Act to authorize the Inclosure of certain Lands, in pursuance of the Third, and also of a Special, Report of the Inclosure Commissioners for England and Wales.

[22nd July, 1848.]

1. 8 & 9 *Vict. c. 118.*—*Inclosures mentioned in schedules may be proceeded with.*—Whereas the Inclosure Commissioners for England and Wales have, in pursuance of an act passed in the 9 *Vict.*, intituled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands; to provide Remedies for defective or incomplete Executions, and for the Non-execution of the Powers of general and local Inclosure Acts; and to provide for the Revival of such Powers in certain Cases," issued provisional orders for and concerning the several proposed inclosures mentioned in the first schedule to this act, and have, in the Annual General Report of their proceedings, certified their opinion that such inclosures would be expedient; but the same cannot be proceeded with without the authority of parliament: And whereas, before the date of the said Annual General Report, the said Inclosure Commissioners issued their provisional order for and concerning the proposed inclosures mentioned in the second schedule to this act, and the requisite consents thereto had been given, but the said Commissioners had not received information of such consents having been so given at the time of making their said report: And whereas the said Commissioners have, by a Special Report, certified their opinion that such last-mentioned proposed inclosure would be expedient, but the same cannot be proceeded with without such authority: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said several proposed inclosures mentioned in the schedules to this act be proceeded with; and as respects the proposed inclosure mentioned in the second schedule to this act, in the same manner as if the expediency of such inclosure had been certified by the Commissioners in their said Annual General Report.

2. *Short title.*—And be it enacted, That in citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to

use the expression "The Annual Inclosure Act, 1848."

LAW LIFE ASSURANCE SOCIETY.

ANNUAL REPORT OF THE DIRECTORS.

SCHEDULES TO WHICH THIS ACT REFERS.

FIRST SCHEDULE.

| Inclosure. | County. | Date of Provisional Order. |
|------------------------------|----------------------|----------------------------|
| 1846 : | | |
| Corringham and Springthorpe | Lincoln . | 9th Jan. |
| Oreton Common | Salop . | 26th Jan. |
| Tansley Common | Derby . | 26th Jan. |
| Caldecot Open Fields . . . | Cambridge . | 24th March |
| Church Stoke and Hurdley . . | Montgomery | 2nd Nov. |
| 1847 : | | |
| Hyssington . | Montgomery and Salop | 8th Jan. |
| Ashby Mask . | Westmorland | 8th Jan. |
| Dulverton . . | Somerset . | 20th Jan. |
| Burghfield . . | Berks . | 23rd Jan. |
| Barrow . . . | Suffolk . | 11th Feb. |
| Woolpit . . . | Suffolk . | 7th May. |
| Hessett . . . | Suffolk . | 18th May. |
| Egton | York . | 16th June. |
| Smardale Fell . | Westmorland | 16th June. |
| Antrobus . . . | Chester . | 24th July. |
| Ilton Moor . . | Devon . | 24th July. |
| Chinnor . . . | Oxford . | 24th July. |
| Mottram St. Andrew | Chester . | 4th Aug. |
| Burstow . . . | Surrey . | 23rd Aug. |
| Cookbury Moor | Devon . | 21st Sept. |
| Ison Common . | Somerset . | 21st Sept. |
| Winsford . . . | Somerset . | 21st Sept. |
| Thornton Moor | York . | 21st Sept. |
| Stoke Pero . . | Somerset . | 21st Sept. |
| Warborough . . | Oxford . | 11th Oct. |
| Upwood & Ramsay | Huntingdon . | 11th Oct. |
| St. Stephen's Down | Cornwall . | 17th Nov. |
| Benwick . . . | Cambridge . | 10th Dec. |
| Lyminge . . . | Kent . | 17th Dec. |
| Mid Lavant . . | Sussex . | 17th Dec. |
| Boxgrove . . . | Sussex . | 17th Dec. |
| East Lavant . . | Sussex . | 17th Dec. |
| 1848 : | | |
| East Green . . | Suffolk . | 8th Jan. |
| Galsworthy Moor | Devon . | 8th Jan. |
| Monksoham . . | Suffolk . | 8th Jan. |
| Ellisfield Common | Southampton | 8th Jan. |
| Kingsley . . . | Stafford . | 11th Jan. |
| Great Missenden | Buckingham | 11th Jan. |
| Bagley Wood . . | Berks . | 21st Jan. |
| The Grange Comn. | Carmarthen . | 21st Jan. |
| Shellwood Manor Waste . . . | Surrey . | 24th Jan. |
| Hesketh Marsh . | Lancaster . | 29th Jan. |

SECOND SCHEDULE.

| Inclosure. | County. | Date of Provisional Order. |
|----------------|------------|----------------------------|
| 1848 : | | |
| Moorhous . . . | Nottingham | 24th January. |

THE DIRECTORS have much pleasure in meeting, for the third time, the Proprietors and Assured, for the purpose of communicating to them the result of an investigation into the affairs of the Society, and of allotting the surplus profit in the proportions provided by the Deed of Settlement, viz., one-fifth to the Proprietors and four-fifths to the assured.

It can scarcely be necessary to remind the Proprietors and Assured, that the first division embraced a period of ten years, from the commencement of the Society to the 31st December, 1833, and that the second and the present division, embrace only periods of seven years each, viz., the second division, the period from 1st January, 1834, to 31st December, 1840, and the present division, the period from 1st January, 1841, to 31st December, 1847.

The Directors will in the first instance contract the extent of the business of the Society, during the septennial period from 1833 to 1840, with the amount of business during the seven years just expired.

From 1833 to 1840 the Society issued 4,186 Policies, or on an average 598 per annum, the new Premiums under which amounted to 161,046*l.*, or 23,007*l.* per annum; and during the same period, the renewal Premiums amounted to 1,239,169*l.* or 177,024*l.* per annum.

During the last seven years, the number of Policies issued has been 3,974, with Premiums thereon amounting to 154,536*l.*, or, on an average 568 Policies per annum, with new Premiums thereon amounting to 22,076*l.* per annum; the renewal Premiums have amounted to 1,851,736*l.*, or on an average of 264,534*l.* per annum.

The gross receipt of the Society from 1833 to 1840, inclusive of Dividends on Stocks and Interest on Mortgage, was 1,734,287*l.* During the last seven years the sum of 2,617,791*l.* has been received.

At the period of the last division of profits, the total number of existing Policies was 5,820. The number existing on 31st December last was 7,764, of which number 6,473 will participate in the profits now to be divided.

The total number of Policies issued by the Society up to 31st December, 1847, was 12,896.

For the purpose of ascertaining the amount of Surplus to be divided, a valuation of the liability of the Society under each separate Policy has been made. The several computations for ascertaining the amount of these liabilities have been made, (as on the occasion of each of the former Divisions) upon the same elements of calculation as those adopted in the construction of the Society's Scale of Premiums, viz., the Northampton Table of Mortality, with interest at 3 per cent.

The whole of the Funds of the Society are invested either on real or Government securities.

The Government securities have been valued in the same manner as upon the former occasions of division.

The following statement exhibits the position of the Assurance Fund on the 31st December.

The Report then states the amount of the Assurance Fund and the Guarantee Fund, and proceeds as follows:—

It will be remembered by the Proprietors that the portion of profit added to the Guarantee Fund at the first division in 1833 amounted to 56,033*l.*; at the division in 1840 the sum of 109,527*l.* was added; compared with these amounts, the sum to be added on the present occasion, viz., 145,656*l.*, is calculated to afford much satisfaction.

The amount of the Guarantee Fund being now 457,229*l.* 6*s.* 6*d.*, the Directors propose to increase the Dividend by 11*s.* per share, which will raise the Dividend from 25*s.* to 36*s.* per share per annum, being after the rate of 18 per cent. per annum upon the sum originally paid: the Dividend after this rate will be paid on the 5th day of April next, clear of Income-tax.

It being provided by the Deed of Settlement that the amount of Surplus falling to the share of the Assured, shall be increased into a reversionary Bonus payable with the sums assured as claims arise, the sum of £582,626 belonging to the Assured has been converted into an equivalent reversionary sum of £883,098, and this sum has been allotted among the several parties interested, upon the same principles as were adopted upon the former occasions of division. Those who have heretofore had Bonus allotted to their Policies, now rank as assured of seven years' standing according to their several ages at the commencement of the septennial period just expired, with the advantage of profit upon their previous Bonus. The Assured who have not previously received Bonus, now rank according to the dates of their several Policies; and a provision has been made for the interests of those, whose Policies are of less than three years' standing, and who consequently are not yet entitled to participate.

In order to enable the Proprietors and Assured to judge of the amount of public benefit conferred by the establishment of this Office, the Directors would draw their attention to the fact, that during the twenty-four and a half years which expired on the 31st Dec. last, the Society has paid no less a sum than £1,764,503 (inclusive of Bonus, amounting to £199,385) in claims upon the death of parties assured.—During this period, three investigations into its affairs have occurred, and these investigations have resulted in the division of Profits to the amount of £1,556,068, in which the Assured have participated to the extent of £1,244,869, and this sum has been increased into a reversionary Bonus amounting to £1,929,085.

These results exhibit a far greater degree of prosperity than has fallen to the lot of any other Assurance Society in a similar period from the date of its establishment; and the Directors would impress upon the Assured as well as upon the Proprietors the necessity of

exertion upon their part for the purpose of maintaining and extending the high position now held by this Society.

SELECTIONS FROM CORRESPONDENCE.

REMUNERATION IN CONVEYANCING.

I have for many years considered the mode of remunerating solicitors according to the length of a deed as highly objectionable. If East and West India merchants, stock-brokers, and brokers and agents of almost every description are remunerated on an *ad valorem* principle, why should not solicitors? In large transactions the risk is much enhanced, and why not the recompense?

In some cases I have found the expenses attending the conveyance of small portions of a large estate enormous, whereas if an *ad valorem* principle were admitted, they could have been done for much less.

The system in Scotland is far preferable, and I believe it is there the rule for practitioners to charge the amount paid to clerks for copying the instruments, a charge which would operate most beneficially if it could be adopted in England.

A SOLICITOR OF 40 YEARS' STANDING.

CERTIFICATE DUTY.

It has occurred to me that the Legislature is very inconsistent in taxing the profession on their certificates, while they allow innumerable non-professional men to act as stewards of manors for divers ecclesiastical dignitaries and others, who are not professional men, and who escape scot-free. Surely *legal* business ought to be confined to *legal* men who are unduly taxed, while others are allowed to receive the benefits of legal business to which they are fairly entitled.

I could point out very serious blunders committed by non-professionals, but I abstain from doing so. M.

CURIOUS DEMISE OF THEATRICAL PROPERTY.

Agreement made in 1608, between Philip Henslowe and Edward Alleyn, [the Founder of Dulwich College,] Esqrs., and Thomas Downton [Doughton or Dowten], who it seems had been a hireling at eight shillings per week, "*as long as they play, and after they lye stille one fortnyght then to give himme halfe wages.*"

The agreement states that in consideration of £27 10*s.* they demised, farmed, and leased to Downton one-eighth part of a fourth part of all such gains in money as should thereafter during the term of thirteen years, arise, grow, accrue, or become due, or properly belong to Henslowe and Alleyn, and for or by reason of any stage playing or other exercise, commodity, or use whatsoever, used or to be used or exer-

cised within the playhouse of said H. and A. commonly called "the Fortune," situate and being between Whitecross-street and Golding-lane, in the parish of St. Giles without, Cripplegate, London, in the county of Middlesex.

Downton was not only to pay ten shillings a week for rent quarterly, and bear an equal eighth part of a fourth of needful charges of repairing, &c., but also that he should *not give over the faculty* or quality of playing, but should *in his own person* exercise the same in the best and most benefit he could within the said playhouse, unless sick, or by consent. D. was also not in any other house within two miles compass, nor was he to give, grant, bargain, sell, or otherwise do away any part of his place without license.

[Henslow was Alleyn's father-in-law.]

—Dr. Hughson's London, Vol. III. p. 333.

MR. JUSTICE BLACKSTONE'S OPINION ON CASE.

CUTTING TREES UNDER COLLEGE LEASE.

THE Presidt and Scholars of King's College in Cambridge Did by Indre of Lease Grant unto Edward Mason certain Tenemts Close Arable Land Meadow ground and premisses in West Puzey in the County of Wilts Except unto the said Presidt and Scholars the Bodies and Tops of all Maiden Oaks Ash and Elm and the Bodies of the Pollards of Oak Ash and Elm standing growing and being on the premisses wth Liberty to view fell cut down top grubb up take and carry away the same at yr will and pleasure To hold unto the said Edward Mason his Extors Admrs and Asss for ye Term of 21. years Undr the Rents Covents and Conditions therein comprized.

N.B. There are several Withies, Thorn Maple and Crab Trees on the premisses.

Q. Whether the said Edward Mason has not the Right of lopping and shrouding (so as he does not top) the said excepted trees?

I am of opinion that (were it otherwise dubious) this Exception of the Bodies and Tops only of maiden Oak Ash and Elm, and the Bodies only of such as are already polled, will give Mr. Mason (by a strong and almost necessary Implication) a Right to shroud & lop them. The only Difficulty is, to ascertain at what point the Shroud ends and the Top begins; for the Lessee must not shroud them so high as to endanger the rotting or decay of the Timber.

Whether the said Edward Mason has not the right & power to cut down grub up and dispose of the said Withies and other Trees (Except Oak Ash and Elm being Timber and * Excepted as Afd) growing on the premisses or how otherwise to take use & apply the same?

I think Mr. Mason hath a Right at any reasonable time, and in a husbandlike Manner, to lop top and shroud ye said Withies & other

Trees, & to cut down & dispose of such of them as have grown from old Stools, & are therefore in the nature of Underwood. But as to taking down ye Bodies of antient Withies, Maples, & such other Trees, whereof ye Lop is a periodical Profit to ye Estate, or of grubbing or eradicating them entirely, this must depend upon ye View with which it is done & the effect it will have upon the Estate. If it be done to make room for any lasting Improvements, & those Improvements be actually made, I conceive that ye Tenant may justify such felling or grubbing; but if by so doing ye Inheritance is prejudiced, or made in any degree less valuable, I apprehend that such Acts are beyond the Power of any Lessee for Years.

W BLACKSTONE

Wallingford 26 Mar: 1768.

I would not be understood to mean that a Lessee for Years has a right to eradicate a whole Wood or Coppice, upon any Idea of Improvement or otherwise: but only single Trees.

W. B.

EXPENSES OF LAW PROCEEDINGS.

To the Editor of the Legal Observer.

WRITS IN THE SUPERIOR COURTS.

I HAVE from time to time noticed your praiseworthy attempts on this subject, feeling assured that the time is not far distant when another system must be adopted. I take leave to inquire why the large fee of 5s. for a summons in the Superior Courts cannot be reduced? The attorney does almost all the labour, and the patentee receives the fees, some 8,000*l.* or 9,000*l.* in a year, for merely stamping or putting a seal on the processe, which I presume is done by a deputy at some 120*l.* a year.

Really, in these times, these things ought not so to be—but I am ignorant with whom the power rests for diminishing the heavy charges; there is, however, no difficulty in ascertaining with whom the power rests, to reduce an attorney's charges, already reduced to an almost starving point.

AN ATTORNEY OF 50 YEARS.

COUNTY COURT FEES.

I summoned a debtor, a clerk in the Custom House, for rent, and paid the fees for service of the summons. I attended with my witness, a distance of seven miles, to prove my case, and was told the summons had not been served, the officer having (as is too often the case in the office) been amused and falsely told by some other clerk, possibly by the defendant himself, that he had got leave of absence for three months. As it is clear that a man is not

intituled to be paid for services *not performed*, am I entitled to have the fee for service refunded?
ONE, &c.

NOTES OF THE WEEK.

APPROACHING CLOSE OF THE SESSION.

ACCORDING to the latest information, it appears that Parliament will not be prorogued till the 2nd or 4th September.

The session, after all, has not been so barren as was expected of Bills for the alteration of the Law. A sufficient number has received or will receive the Royal Assent to occupy many of our pages during the Vacation. We shall submit them to our readers as early as may be convenient.

DEATH OF SIR GIFFIN WILSON.

Sir Giffin Wilson, knt., was called to the Bar by the Honourable Secretary of Lincoln's Inn, on the 30th Jan., 1789, practised at the Equity Bar, and was promoted to the rank of King's Counsel in Hilary Term, 1819. He was formerly a Commissioner of Bankruptcy, and held the office of Recorder of Windsor. He was appointed one of the Masters in Chancery, on the 23rd March, 1826, when Master Harvey was promoted to the office of Accountant-General of the Court of Chancery. Sir Giffin died on the 4th instant at his house in Stratford Place, in his 83rd year.

LAW BUILDINGS.

We observe that the Inner Temple is proceeding rapidly to complete the handsome buildings next the river.

The old houses, adjoining the Law Society's Hall on the north side have been pulled down,

and the plans for the additional library and offices, designed by Mr. Vulliamy, the architect, have been approved by the Council. The contractors for the building have commenced the excavation; the carcass will be erected with a stone front, next Chancery-lane, and roofed in by Christmas, and the whole is to be finished in June next. This will form the North Wing of the Hall. The purchase has been completed of several houses on the south side, for the purpose, as early as may be convenient, of constructing the South Wing, and completing all the arrangements for the various objects of the Society, the accommodation of the members, and the despatch of the increasing business of the Institution.

LAW OF MARRIAGE.

We are not surprised that a correspondent, "A Solicitor of Fifty Years," should have read with unmixed pain the decision of the House of Lords, in effect affirming the marriage of an infant (not consummated) under coercion and threats. It is observed that "she is but 17, and the husband old enough to be her grandfather. She an accomplished young lady, and he an uneducated man, and the brother of her guardian." Our indignant correspondent says—"If such a marriage is to be held good, it is the only country I that would maintain it."

"When the legislature thinks proper to throw such guards to protect a female from passing a freehold estate of the value of £50 without an examination before a Judge or Commissioners surely similar protection ought to be given to a young lady of 17, before she is permitted to contract a marriage rendering her perhaps, miserable for life."

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Attorney-General v. Corporation of Chester.
July 9, 1848.

MASTER. — INTERROGATORIES. — AFFIDAVITS.

A party who consents to proceed upon affidavits before the Master, does not thereby lose his right to enforce an answer to interrogatories. The notice should be given of his intention to exercise that right before he uses it.

THIS was a motion to discharge a sequestration against the Corporation of Chester, issued to enforce an answer to interrogatories before the Master. The interrogatories related to the possession of books and papers. The warrant upon which they were settled was attended in 1843; but it appeared to have been arranged between the parties that, if a sufficient affidavit was left in respect to these books and papers, an answer to the interrogatories would not be

insisted upon. An affidavit had accordingly been made after the date above-mentioned; but the Attorney-General was apparently not satisfied with its statements, and had recently applied for and obtained from the Master a sequestration, upon the ground that the examination had not been left as was required by the previous order.

Mr. Rowell and Mr. Hall, for the motion, did not deny that the information required must be given, but complained of being treated as in contempt, after the other party had so long appeared disposed to be satisfied with the affidavit.

Mr. Blount stated, that the Attorney-General had been in vain endeavouring to obtain sufficient information by affidavit since 1843, and was justified in taking the course now adopted.

Lord Langdale said, it was clear that parties were not, by consenting to proceed before the Master on affidavits, deprived of their right to require an answer to an examination, otherwise

it would be impossible to obtain information. Therefore, the Attorney-General might well require an answer to the interrogatories, if the affidavit seemed to be insufficient. But after proceedings by affidavit had been consented to, he thought that notice should be given before steps were taken to enforce an examination. Therefore, the only question was as to time.

It was ultimately arranged that a month's time should be given to put in the examination.

Vice-Chancellor of England.

Ex parte the Rector of Bredicot. June 1, 1848.

RE-INVESTMENT OF PURCHASE-MONEY.—APPLICATION FOR SMALL RESIDUE.—COSTS.

Where the greater portion of a sum of money in Court had been invested in the purchase of land as an addition to a glebe, the rector applied to have the remainder, amounting to 20l., paid to him in liquidation of certain expenses incurred about the purchase not authorized by the act of parliament. Application refused.

THE Gloucester and Birmingham Railway Company had purchased some land belonging to the glebe of Bredicot, and 200l., the amount of the purchase-money, had been paid into Court in the usual manner. Four small pieces of land had been found in the neighbourhood as fit to be purchased with the 200l., as an addition to the glebe. The amount of the purchase-money for them would be 179l. 10s., including all expenses, leaving 20l. 10s. in Court not invested.

Mr. Green now appeared on petition, and asked that the 20l. 10s. might be paid to the rector in liquidation of certain extra costs to which he had been put in the erection of fences and making repairs connected with the new purchase, which costs were not provided for by the act of parliament. He contended that as his Honour had lately made such an order where the residue was 2l., it might very well be made in the present instance. If the 20l. 10s. was allowed to remain in Court, it would very probably never be taken out, and certainly the dividends would not for many years to come, as the expenses attending the yearly application for them would more than swallow them up.

His Honour said he would not make the order as asked: it must be for payment of the dividends of the 20l. 10s. to the rector and his successors, and he had no power to make it otherwise. Because he had made an order where the residue was 2l., that was no reason why he should do so where it was 20l. If he did so, next week he should be asked to do it where it was 100l., and so on. There were, doubtless, many cases precisely like the present constantly occurring, and he thought it very desirable that a short act of parliament should be passed for the purpose of giving the Court authority to deal with these small sums of money.

Vice-Chancellor Knight Bruce.

Clifford v. Turrell. Jan. 11, 12, & 17, 1848.

PRACTICE.—ENTERING ORDER.—SOLICITOR'S LIEN.

An order of the Court, duly passed, cannot be intercepted in its entry by reason of any lien of a solicitor for his costs, although he is no longer employed.

Mr. Cooper moved, on behalf of the plaintiffs, that Mr. Basham, his former solicitor, might be ordered to present and produce to the proper officer of the Court, an order made in the cause, for the purpose of the same being entered, the same having been duly passed. Mr. Basham, after conducting the cause for some time, during which he had obtained the order in question, and had passed the same, was discharged under the authority of the Court, and Messrs. Jones and Dunster were appointed in his place. The new solicitors applied to Mr. Basham to enter the order he had so obtained, but he refused, on the ground he was not bound to do so, he having a lien on his costs in the cause.

Mr. W. H. Terrell, on the authority of the cases of *O'Dea v. O'Dea*, 1 Sch. & Lef. 315; *Heslop v. Metcalfe*, 3 Myl. & Cr. 183; *Bozon v. Bolland*, 4 Myl. & Cr. 354; and *Cooper v. Hewson*, 2 Y. & Coll. C. C. 515; contended that the discharged solicitor was not bound to do as he had been required, for that his order would be wholly valueless if he permitted order to be entered, he not being entitled to any fund which would be produced by the order being entered.

His Honour said, the short question was, whether an order of the Court, which had been passed, could be intercepted in its entry by reason of any lien which a solicitor had, and he was clearly of opinion that it could not. He was clearly of opinion that Mr. Basham had such lien. He must make the order for the production of the order in question for the purpose of the same being entered, and Mr. Basham should receive 20s. costs for his attendance, and the order should be returned to him after entry. His Honour would also direct, if Mr. Basham wished it, that it should be added that the order should be without prejudice to his lien, and a declaration that he had a lien, on any cash or funds which were or should be paid into Court in the cause, for his bill of costs in the cause. His Honour did not think that a solicitor, if he asked it, had not a lien upon any fund paid, or to be paid, into Court, under any order which had been paid into Court wholly or partially by his skill and labour, nor did he think that any branch of the Court had so decided. His present order was made on a short ground, that an order of the Court duly passed could not be intercepted in its entry by any lien.

* On this case being brought before the Lord Chancellor, he was of opinion that the parties might have obtained an office copy of

Queen's Bench.

(Before the Four Judges.)

The Queen v. Robert Vickery. Trinity Term, 1848.

ATTACHMENT. — PARISH OFFICER COMPELLABLE TO GIVE EVIDENCE. — AFFIDAVITS.

On an application to justices at Petty Sessions for an order of removal, a witness attending there in obedience to a Crown Office subpoena, cannot refuse to give evidence as to the pauper's settlement, on the ground of his being either a rated inhabitant or officer of the parish on which the order is sought to be made.

In moving for an attachment against a person for refusing to give such evidence, the affidavits did not state that one of the justices at Petty Sessions, before whom the witness was subpoenaed to attend, was of the quorum.

Held, it sufficiently appeared that the tribunal before which the application was made was properly constituted.

A RULE nisi had been obtained, calling on the defendant, Robert Vickery, to show cause why a writ of attachment should not issue against him for his contempt in not paying obedience to a writ of subpoena, issued out of this Court on the 8th of May, 1847, commanding him to appear and give evidence before the justices at Petty Sessions, to be held on the 3rd of June following, at Wellington, in the county of Somerset, touching an application by the churchwardens and overseers of the parish of Stawley, in the said county, for an order of justices for the removal of John Melhuish, his wife and children, to the place of their last legal settlement. The facts disclosed by the affidavits have already been reported in *Regina v. Vickery*,^a when the rule for an attachment was discharged on a preliminary objection to the affidavits, that they failed to show that a complaint had been made by the parish officers of the chargeability of the paupers. Subsequently, that defect had been remedied, and a fresh subpoena served on Vickery. He attended at the Petty Sessions, and after his sister had been examined, he was called as a witness, but refused to be sworn in general terms to give evidence, but consented to be sworn in a qualified manner to answer such questions as should be asked him, with the exception of such as the law would exempt him from answering by reason of his being a rated inhabitant in, and also a churchwarden and overseer of, the parish of Raddington, to which it was sought to remove the paupers.

Kinglake, Serjeant, and Mr. Bell, now showed cause. The affidavits are still defective, because they omit to state that one of the justices to whom the application for the order of removal was made was of the quorum. The 13 & 14 Car. 2, c. 12, s. 1, provided, that "any two justices, whereof one to be of the quorum," may by their warrant remove any person likely to become chargeable. The statute 26 Geo. 2, c. 27, (the provisions of which are extended by the 7 Geo. 3, c. 21, and the 4 Geo. 4, c. 27,) applies to orders, warrants &c., but in an application of this sort affidavits must still show that the justices were such as by the 13 & 14 Car. 2, were empowered to make the order. Vickery, as a rated inhabitant and churchwarden and overseer of Raddington, is not compellable to give evidence in support of an order which must afterwards be conclusive against his own parish. In *Regina v. The Recorder of Bath*,^b an overseer was held not a competent witness in an appeal by his own parish. In *Rex v. Whitley Lower*,^c and *Rex v. Hardwick*,^d the declarations of rated inhabitants were held admissible on the principle that they were not compellable to give evidence. See also *Rex v. Woburn*,^e *Regina v. Adderbury, East*,^f *Worrall v. Jones*,^g *Fenn v. Grainger*,^h *Mant v. Mainwaring*.ⁱ

Mr. Pashley, contra. Where two justices are acting together, it may be presumed that one is in fact of the quorum, inasmuch as it is the practice in issuing commissions to make all named therein of the quorum but one. *Taylor v. Clemson*,^k is a strong authority that the Court will presume the proceedings below to have been correct. In *Regina v. Silkstone*, the jurat of an examination stated that *de. &c.* sworn before "me," and this Court held that to give the necessary jurisdiction it would intend that two justices were acting. *Regina v. Whiston*,^m and *Regina v. Witney*,ⁿ are also strong authorities to show that facts necessary to jurisdiction will be presumed in the absence of any evidence to disprove them. In this case the magistrates had already entered upon the inquiry, and had examined one witness [Stopped by the Court.]

Lord Denman, C. J. I think it may be presumed that the Court when assembled at Petty Sessions is properly constituted. The defendant then appears before that Court and refuses to answer all the questions put to him. He will only answer certain questions, but those which might fix a liability on the parish of which he is a rated inhabitant and an officer he refuses to answer. Then we have to say whether there is anything which prevents the Court from enforcing an answer to its ques-

the order, and that the Registrars could have entered that. Two of the Registrars concurred in that view of the practice, but three were of a different opinion.

^b 9 Adol. & Ellis, 714.
^c 1 M. & S. 636.
^d 11 East, 572.
^e 10 East, 395.
^f 5 Q. B. R. 187.
^g 7 Bing. 395.
^h 3 Campb. 177.
ⁱ 8 Taunt. 139.
^j 2 Q. B. R. 978.
^k Id. 580.
^l 4 Adol. & Ellis, 607.
^m 5 Adol. & Ellis, 121.

tions. It is said there is no allegation that one of the justices was of the *quorum*, but we are bound to presume that he is a justice of that class which is required by the law. Then this person refuses to answer because he is interested. The 54 Geo 3, c. 170, s. 9, gets rid of several of these objections which a witness might have made with success before the passing of that act. Then came the 3 & 4 Vict. c. 26, which applies to parishioners and parish officers. It declares that such person shall not be disqualified or prevented from giving evidence by reason of his being, as such parishioner or parish officer, a party to such trial or proceeding. The person making the objection here is rendered competent by that act; and I think the effect of those two statutes is to make a parishioner not a party for any purpose whatever, so as to exclude his evidence, but only in cases where he is personally liable for the payment of costs, as distinguished from the other parishioners. He is therefore not only a competent witness, but compellable to give evidence. The case of *Regina v. Adderbury, East*, cannot be applied to the present case. There the churchwarden and surveyor acted as the agents in the dispute, and, as their admissions were sufficient to bind the party for whom they acted, they were held not compellable to give evidence.

Mr. Justice *Patteson*. The defendant here appeared in obedience to the subpoena before the justices at Petty Sessions, but refused to answer, except in a qualified way. Then it is said, he was not bound to answer, for that it does not appear that there was present at the Sessions a justice of the *quorum*. The 26 Geo. 2, c. 27, does not apply to a case of this sort. That act says that "no act, document, or order" shall be set aside for the want of there being expressed in it that one of the justices making it was of the *quorum*. The objection, however, is, that the affidavits do not express that. One case of difficulty was put, namely, that of an indictment for perjury; but on an indictment of that sort it is not necessary to show that the justices who administered the oath were duly appointed, but merely that they were acting as such. It is quite clear that before the 54 Geo. 3, c. 170, s. 9, the objection on the ground of interest would prevail. *Rea v. Woburn* was sufficient to show that a rated inhabitant was not compellable to give evidence. Then came the 3 & 4 Vict. c. 26, which gets rid of the objection, and shows that such person is not incompetent as a witness for or against his parish. Taking these two acts together, the plain meaning is, that when the whole body of parishioners are parties concerned, the particular officer must be considered as not interested, for it would not be consistent with justice to suppose that the legislature would allow him to be a witness for, and not compel him to be a witness against, the parish. The parish officers must be treated as strangers on the one side and on the other, like any other third parties for that purpose,

and, if so, equally liable to be called by subpoena for either side.

Mr. Justice *Coleridge* concurred.

Mr. Justice *Erle*. I think this rule should be absolute. On the objection in point of form, I think we must presume that they were a tribunal properly constituted, and therefore competent to take the examination. The general rule of law is, that when justices act in discharge of a duty, they may be presumed, till the contrary be shown, to have authority so to act. I think that rule ought to be extended to this case. As to the other point, it is to be observed, that the objection taken by the defendant was of a personal nature. The interests of truth require that all who have knowledge of the facts on any matter should be compelled to disclose them before any tribunal sitting to inquire into them; and it is a general rule that all persons shall come forward to give such information as they possess. This general rule is subject to few exceptions. A man is not required to criminate himself, nor to give evidence that will injure the title to his own property. In cases of this sort a man may refuse to give evidence; but the 3 & 4 Vict. c. 26, shows that no one can, by reason of his being an officer of a parish, be prevented from giving evidence in matters in which that parish is concerned. Here the person is competent, and being competent, is compellable to give evidence. The rule therefore should be absolute.

Rule absolute.

Court of Exchequer.

Davy v. Lambert. June 12, 1848.

PRACTICE.—PAPER BOOKS.

A party cannot have judgment upon a demurrer when the paper books have not been delivered on behalf of both parties.

THIS cause, which stood in the demurrer paper, having been called on for argument, and no paper books having been delivered by the party praying judgment—

Hipsley cited *Abraham v. Cook*, 3 Dowl. 215, to show that the proper course, under such circumstances, was to strike it out of the paper.

Martin, contra, observed, that such was by no means a general rule, for in *Scott v. Robson*, 2 C. M. & R. 29, the Court gave judgment without the delivery of the paper books, and where the books had been delivered by one party, there was nothing in the rule of Court, H. T., 4 W. 4, R. 7, to make it obligatory on the other party to deliver the other two books. As to the case of *Abraham v. Cook*, that occurred most probably before the rule of Court

Platt, B. How can I consistently give judgment in your favour when I know nothing of the case? We are to give judgment according to the right of the parties.

Alderson, B. I see the rule was in Hilary

Term, and the case of *Abraham v. Cook* in Michaelmas Term of the same year.*

Per Curiam. The cause must be struck out.

Court of Bankruptcy.

In re Joseph Hubbard. August 5, 1848.

DISPUTED ADJUDICATION.—ACT OF BANKRUPTCY.

The acts of bankruptcy enumerated in the 6 G. 4, c. 16, s. 3, are meant as tests of the trader's insolvency.

A trader may commit an act of bankruptcy by "fraudulently delivering goods," without any dishonest intention, or any moral fraud.

JOSEPH HUBBARD, who carried on business at Dorking, in Surrey, as a draper, was adjudicated a bankrupt under a fiat bearing date the 27th July, 1848, and gave notice to dispute the adjudication pursuant to the 5 & 6 Vict. c. 122, s. 23.

The act of bankruptcy relied upon was founded on the following facts:—Early in June last, the bankrupt received an order to furnish a small quantity of cloth of a particular quality, which he had not in stock, and he wrote to Messrs. Costekar & Co., of London, to supply him with the cloth so ordered. By an accident the parcel was misdirected, and did not reach the bankrupt for a fortnight. In the interval the bankrupt was sued by several of his creditors, and when Costekar's goods were received at the bankrupt's premises he was in expectation of an execution being put into his house at the suit of one of his creditors. Under these circumstances, after keeping Costekar's goods for about a week, the bankrupt handed them to an acquaintance, directing that they might be forwarded to Costekar & Co.; and, on the 24th of July last, the goods were returned to, and received by, Costekar & Co. The parcel had been opened on the bankrupt's premises, but the goods contained in it were not exposed for sale or taken into stock. It was contended, on behalf of the petitioning creditor, that this was a fraudulent

delivery of goods by the bankrupt, with intent to defeat or delay his creditors.

Mr. Bagley appeared on behalf of the bankrupt, to dispute the adjudication. He contended that the facts, as alleged, did not amount to a fraudulent delivery of goods, within the meaning of the 6 Geo. 4, c. 16, s. 3. The goods were not in fact the bankrupt's. He had contracted to purchase them from Costaker & Co., but the contract was afterwards rescinded by consent of both parties. It was competent for the parties to a contract at any time to rescind that contract, when by so doing they could be respectively placed *in statu quo*. The case amounted to no more than this, that the bankrupt ordered goods, and when they were delivered he found he was not in a situation to pay for them, upon which he returned them to the vendor, who agreed to accept them. There was no fraud, either morally or legally, in the transaction. It was the same as if the goods were lent to the bankrupt and he had returned them, which would not be an act of bankruptcy. *Ex parte Whitby*, Mon. & Chit. 671. The learned counsel also cited *Scott v. Thomas*, 6 Car. & P. 248, and *Cumming v. Baily*, 6 Bing. 392, as distinguishable from the present case.

Mr. Lucas, for the petitioning creditor, relied upon *Cumming v. Baily*, and *Scott v. Thomas*.

Mr. Commissioner Fane did not think that the question here depended in any degree upon the motives of the bankrupt in returning the goods. No doubt he acted from an honest motive, and there was no moral fraud, but there was what the law called a "fraudulent" delivery. The delivery of the goods was an overt act of insolvency. The bankrupt himself knew that he should not be able to pay for the goods, and after they had been delivered to him in the course of business, and kept for a period of 12 days, he returned them to the vendor. The acts of bankruptcy enumerated in the statute were intended as so many tests of the trader's insolvency, and, looking at the bankrupt's conduct in this particular transaction, it could not be doubted that he returned Costekar's goods because he believed himself to be insolvent. The bankrupt acted in this respect like an honest man, but he had committed an act of bankruptcy.

Adjudication affirmed.

* There is also a rule of Michaelmas Term, 17 C. 1, A. D. 1641, to the same effect. But see *Somers v. Miller*, 2 H. & W. 117.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

CONSTRUCTION OF STATUTES.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Law of Arbitration, 315.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, pp. 169, 190.

Bankruptcy, p. 213.

Lunacy, p. 216.

Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.]

ANNUITY.

1. *Judge's Order*.—1 & 2 Vict. c. 110.—*Suitors' Fund*.—A judge at chambers having made an order under the 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82, s. 1, charging an annuity payable out of the "Suitors' Fund," by order of the Lord Chancellor, in pursuance of the provisions of the 46 G. 3, c. 128, this Court considering it doubtful whether or no the judge's order was valid, refused to set it aside, as, by so doing, they would deprive the party of the right of appeal.

Quere, if this Court has jurisdiction over an order of that description. *Witham v. Lynch*, 1 Exch. R. 391.

2. *Enrolment*.—*Party enabled to charge the fee simple*, 53 G. 3, c. 141, s. 10.—*Term for better securing*.—Lands were conveyed to such uses as K. should appoint, and, in default of and until appointment, to K. and his assigns for K.'s life, and from and after the determination of that estate in K.'s lifetime, to a trustee for K. and his assigns, and to bar dower; and, from and after K.'s decease, to K.'s heirs and assigns.

Held, that during K.'s life estate, and before such appointment, K. was a party enabled to charge the fee simple in possession with an annuity, within the meaning of the stat. 53 G. 3, c. 141, s. 10, and therefore the annuity (being of the value required by that clause) did not need enrolment under section 2.

By an annuity deed, reciting conveyance in fee to K., the grantor, of certain premises, K. covenanted to B., the grantee, that, if the annuity should be in arrear 14 days, B. might enter on the premises and distrain; if 21 days, B. might enter and take the rents and profits until the arrear should be satisfied. It was then witnessed that, for further securing the annuity, K., with the consent and by the direction of B., appointed (under a power vested in K.) and demised to H., (party to the annuity deed,) his executors, &c., for 99 years, the premises before mentioned, then in the occupation of K. which premises, it was agreed by the same clause, should, for the purposes of the deed, be considered as held and occupied by K., as tenant to H., at the yearly rent of 500*l.* payable on the same day as the annuity. The demise for 99 days was on trust to permit K. to take the rents and profits till default in payment of the annuity; and if the annuity should be in arrear 30 days, then, out of the rents and profits, or by demising, selling, or mortgaging the premises for any part of the 99 years, to raise sufficient money for payment of the arrears, and apply the same accordingly,

paying K., or permitting him to receive, the residue.

On default for 30 days in payment of the annuity, ejectment was brought on the several demises of B. and H., and a verdict was found for the plaintiff on B.'s demise, but for the defendants on that of H. (under the judge's direction) because H. had not given K. notice to quit.

On motion for a new trial on the ground that the plaintiff could not recover on B.'s demise by reason of the term in H. and the tenancy of K., *Held*, that the verdict on that demise was rightly found; for that the first clause of entry entitled B. to maintain ejectment after 21 days default, and that right was not taken away by the creation of a term in H. in the manner and for the purposes stated.

Semble, that, if H. had mortgaged the premises for payment of the annuity, B. could not have brought ejectment while the mortgage subsisted. *Doe d. Butler v. Lord Kensington*, 8 Q. B. 429.

Cases cited in the judgment: *Hulsey v. Hales*, 7 T. R. 194; *Doe d. Chawner v. Boulter*, 6 A. & E. 675.

ATTORNEY.

Disobedience to statute a misdemeanor.—Stat. 6 & 7 Vict. c. 73, s. 2, prohibits, generally, persons from acting as attorneys in any Court of civil or criminal jurisdiction, unless previously admitted, enrolled, and otherwise duly qualified. Sections 35 and 36 enact that, in case any person shall so act, he shall be incapable of recovering his fees, and such offence shall be deemed a contempt of Court, and be punished accordingly.

Held, that an unqualified person so acting as an attorney may be indicted, under the substantive prohibitory clause, section 2, for a misdemeanor, and that ss. 35 and 36 do not limit the punishment for the offence to the particular incapacity and punishment there specified. *Reg. v. Buchanan*, 8 Q. B. 883.

Cases cited in the judgment: *Rex v. Wright*, 1 Bur. 543; *Castle's case*, Cro. Jac. 643; *Rex v. Dickenson*, 1 Wms. Saund. 135, b.

BUILDING SOCIETY.

Mortgage.—*Special meeting*.—*Shares*.—A benefit building society, established under the provisions of the 6 & 7 W. 4, c. 32, is not precluded from lending money on mortgage to its own members.

One of the certified rules of such society provided, that no action should be brought or defended until the approbation of the majority of members present at "a special meeting" of the society should be obtained: *Held*, no objection that the approbation of the majority was obtained at "a special general meeting."

Another rule provided, that a committee should determine all disputes which should arise respecting the construction of the rules of the society, or any of the claims, matters, or things therein contained, and also of any conditions, alterations, or amendments which

should or might thereafter arise between the trustees, officers, and other members of the said society: *Held*, that the trustees might, notwithstanding, bring an action against a member for the amount of his subscriptions and fines. *Seemle*, that under the 6 & 7 Wm. 4, c. 32, for the regulation of benefit building societies, the legislature intended that no one member should acquire a larger interest than 150*l.* in respect of his share or shares in such society. *Cutbill v. Kingdom*, 1 Exch. R. 494.

CHURCH BUILDING RATE ACT.

General words "other tenement."—A local act enabled trustees for rebuilding a parish church to borrow money, and charge it on rates, to which the trustees should "assess all and every person and persons who do or shall inhabit, hold, or occupy any land, house, shop, warehouse, vault, mill, or other tenement within the said parish;" half the rate to be paid by the owner or landlord, and half by the occupier or tenant: tenants or occupiers to pay the whole in the first instance, and deduct the half out of the rent: power of distress was given, if any person should omit to pay for 30 days after personal demand or written demand left at his place of abode; power of imprisonment if he secreted his goods; power of distress if any person assessed should quit his land, dwelling-house, warehouse, shop, vault, mill, or other tenement, in respect whereof he should be so rated as aforesaid, before paying his said rate; and it was enacted that any person appointed by the trustees might inspect the books of the poor rate and land tax, to ascertain the rates to be levied under this act. *Held* that the vicar was not rateable in respect of his tithes as an "other tenement." *Reg. v. Nevill*, 8 Q. B. 452.

Case cited in the judgment: *Sandiman v. Breach*, 7 B. & C. 96.

COPYHOLDS.

See *Land Tax Redemption*.

CORPORATION.

1. *Contracts without seal.*—*Guardians of union.—Remuneration of witness.*—The guardians of a poor law union cannot bind themselves by an order, not under seal, for making a survey and map (according to stat. 6 & 7 W. 4, c. 96, s. 3,) of the rateable property in a parish forming part of the union. For such order is not a contract necessarily incident to the purposes for which the guardians are made a corporation by stats. 5 & 6 W. 4, c. 69, s. 7, and 5 & 6 Vict. c. 57, s. 16; and it is not intended by stat. 6 & 7 W. 4, c. 96, s. 3, that the guardians of a union should make themselves liable for the expenses of such plan.

Not can such guardians bind themselves by a contract without seal (if they can in any manner contract) to remunerate a surveyor for attending as a witness on appeal against a

parochial assessment within the union. *Raine v. Strand Union*, 8 Q. B. 326.

Cases cited in the judgment: *Beverley v. Lincoln Gas Company*, 5 A. & E. 229; *Mayor of Ludlow v. Charlton*, 6 M. & W. 813; *Church v. Imperial Gas Company*, 6 A. & E. 846; *Arnold v. Mayor of Poole*, 4 M. & G. 860; *Fishmongers' Company v. Robertson*, 5 M. & G. 131.

2. 5 & 6 W. 4, c. 76, s. 92.—*Interest on bond.—Repair of pew.*—Under stat. 5 & 6 W. 4, c. 76, ss. 66, 67, a corporation executed a bond for payment of an annuity to a person removed from office, and also for payment, on demand, of arrears due before the date. The obligee, consenting not to press for the arrears, the council passed a resolution to pay him interest thereon. *Held*, that such resolution, and orders of the council for payment of the interest, were unsanctioned by section 92, and were liable to be quashed on being brought by *certiorari*.

And, per *Patteson, J.*, that independently of this objection, the resolution not being under seal, could not bind the corporation. The corporation had, during all the time of living memory, repaired from the corporation funds a pew in the parish church to which the members of the corporation had been used, in their character of corporators, to resort to worship. It did not appear that the corporation possessed any hall or other building within the parish. *Held*, that such repairs might be defrayed from time to time, under section 92. *Reg. v. Town Council of Warwick*, 8 Q. B. 927.

COUNTY COURTS' ACT.

1. *Splitting demands.*—The 63rd section of the Small Debts' Act, 9 & 10 Vict. c. 95, enacts, "that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts;" *Held*, that the term "cause of action" meant "cause of one action," and was not limited to an action on one separate contract.

In the case of tradesmen's bills, in which one item is connected with another in this sense, that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand, such demand, if it exceeds 20*l.*, ceases to be within the jurisdiction of the County Court.

Therefore, where the sub-contractor of a railway company gave his workmen tickets or orders for goods, which were supplied by the plaintiff, and the latter brought 228 actions in the County Court against the defendant in respect thereof, for sums amounting in the aggregate to 203*l.* 19*s.*, the Court granted a prohibition, though one claim only amounted to 5*l.* and many to less than 20*s.* *Quære*, whether the 63rd section of the Small Debts' Act applies to all debts which

could be comprised in one description in one count.

Quære, whether a prohibition ought to be granted where a cause of action has been improperly divided into several suits, but the aggregate amount claimed does not exceed 20*l.* *Aykroyd, in re*, 1 Exch. R. 479.

Cases cited in the judgment: *Girling v. Alders*, 1 Vent. 73; 2 Keb. 617; *Hesketh v. Fawcett*, 11 M. & W. 360; *Neale v. Ellis*, 1 D. & L. 163.

2. *Judgment in Superior Court.*—*Semble*, that a party who has recovered judgment for a debt in one of the Superior Courts cannot sue upon the judgment in a County Court. *Francis v. Rance*, 35 L. O. 219.

3. *Prohibition.*—A prohibition will be granted to restrain the judge of a County Court from proceeding in an action, founded upon a judgment of this Court. *Rance v. James*, 35 L. O. 347.

4. *Superior Court.*—*Costs.*—Where an action was brought in a Superior Court, after an order in council constituting a County Court for the particular district, but before such County Court came into operation, and application was made to this Court for the purpose of depriving the plaintiff of costs, on the ground, that the sum recovered in the action (covenant) was only 5*l.*, the Court refused the rule, upon the ground, that at the time when the action was brought, there was not a County Court in operation in which a plaint might have been entered in pursuance of the act. *Harris v. Laurence*, 35 L. O. 440.

5. And so when there was a County Court already in existence, but which was not in operation under the statute 9 & 10 Vict. c. 95. *Parker v. Crouch*, 35 L. O. 440.

6. *Prohibition.*—*Replevin.*—In actions of replevin the jurisdiction of the County Courts Act, 9 & 10 Vict. c. 95, extends to cases where rent to a greater amount than 20*l.* is claimed, with power under section 121, for either party, where the claim is for more than 20*l.*, to remove the cause into a Superior Court. *Wright v. Rice*, 35 L. O. 591.

COVENANT IN MORTGAGE DEED.

7 G. 2, c. 20.—*Power of Judge at Chambers.*—An action of covenant on a mortgage deed is within the 7 G. 2, c. 20, and under that statute a judge at chambers has power to make an order for the delivering up of the deed. *Smeeton v. Collier*, 1 Exch. R. 457.

Case cited in the judgment: *Dixon v. Wigram*, 2 Cr. & J. 613.

CUSTOMS' ACTS.

9 G. 4, c. 60, and 5 & 6 Vict. c. 14.—*Corn duties.*—*Action against collector.*—Stat. 9 G. 4, c. 60, repealing certain acts which laid duties on foreign corn imported for consumption in the United Kingdom, imposed

new duties, to be graduated according to the average price of British corn, which average was to be certified by the comptroller of customs, who, for that purpose, was to strike a six weeks' average on the prices for the last week, as ascertained from returns for that week transmitted to him, and the averages certified by him in the five preceding weeks.

The Customs' Act, 3 & 4 W. 4, c. 56, in the table of duties inwards, has the words "Corn. See 9 G. 4, c. 60." Stat. 5 & 6 Vict. c. 14, repeals stat. 9 G. 4, c. 60, (except as to the repeal of former acts,) and enacts that there shall be levied and paid, from and after the passing of stat. 5 & 6 Vict. c. 14, the duties on corn specified in the table annexed. The table graduates the duties according to the average price "made up and published in the manner required by law." Section 28 enacts, that the comptroller shall strike a six weeks' average from the prices transmitted to him for the last week and his last five averages, and shall, on every Thursday, transmit a certificate of the average so struck to the collectors at the ports; and the duties to be paid shall be regulated by the last of such certificates received by the collector. Section 30 authorizes the comptroller, till there shall have been a sufficient number of weekly returns under the act, to use his own weekly averages before the act passed.

Held, by the Court of Exchequer Chamber, reversing the judgment of the Court of Queen's Bench:—

That the statute 9 G. 4, c. 60, was not kept alive by stat. 3 & 4 W. 4, c. 56, for the purpose of striking the first average under stat. 5 & 6 Vict. c. 14, but was absolutely repealed by stat. 5 & 6 Vict. c. 14; and that, therefore, no duties were payable upon corn imported between the passing of stat. 5 & 6 Vict. c. 14, and receipt by the collector of the comptroller's first certificate under the last-mentioned statute.

Held, also, by the Court of Exchequer Chamber:—

That the collector was liable, under stat. 3 & 4 W. 4, c. 52, s. 18, to an action on the case by the importer for not signing the bill of entry for such corn until he received a certain sum which he claimed as duty. And that, the corn having been delivered up to the importer on his paying, under protest, the sum so claimed as duty, the measure of damages was the amount so paid, together with the loss sustained by the detention of the corn, taking into account a fall of prices which had occurred between the refusal to sign and the delivering up of the corn. *Barrow v. Arnould*, 8 Q. B. 395.

Cases cited in Q. B. judgment: *Sutton v. Ellison*, 9 B. & C. 750-2; *Reg. v. Mangan*, 8 A. & E. 496. In judgment in Error, *Shaypard v. Gosnold*, Vaughan, 159, 166.

DISTRESS.

Stale of horses.—*Expenses of keep.*—5 & 6 W.

4, c. 59, s. 4.—Under stat. 5 & 6 W. 4, c. 59, s. 4, requiring the distrainer of any horse (which word "horse" may, by sec. 21, be construed "horses,") to feed it while in the pound, and empowering him, after 7 days, to sell any such horse for the expenses, a party distraining several horses may sell one or more for the expenses of all. *Sensible, per Coleridge, J.*, that he may repeat such sale from time to time as need requires.

But, if he pleads the sale in an action of trespass for taking and converting the horses sold, he must allege that it was necessary to sell them for payment of the expenses.

And, where defendant had obtained a verdict on such plea not containing the above allegation, judgment was given *non obstante veredicto*. *Layton v. Hurry*, 8 Q. B. 811.

DUTIES ON CORN.

See *Customs' Acts*.

ELEGIT.

Since the 1 & 2 Vict. c. 110, s. 11, an *elegit* need not describe the lands to be extended by metes and bounds; it is sufficient to describe them in any manner by which they may be identified. *Sherwood v. Clark*, 15 M. & W. 764.

Cases cited in the judgment: *Fenny d. Masters*, v. *Durrant*, 1 R. & Ald. 40; *Doe d. Taylor v. Earl of Abingdon*, 2 Dougl. 473.

ENROLMENT OF ANNUITY.

See *Annuity*, 2.

EXAMINATION OF WITNESSES ABROAD.

1 W. 4, c. 22, s. 4.—Where the Court of Chancery had directed an issue to be tried in the Court of Common Pleas, and also directed that a witness then abroad should be examined on interrogatories, the Court of Common Pleas refused to vary the order of the Court of Chancery, by directing that the plaintiff should be at liberty to cross-examine the witness, *vivâ voce*, before the Chancery Commissioner; or to issue a separate commission to cross-examine the witness under 1 W. 4, c. 22, s. 4. *Hargrave v. Hargrave*, 5 D. & L. 151.

EXCISE ACTS.

1. *Sweet spirits of nitre* are not "spirits" within the meaning of the Excise Acts, 6 G. 4, c. 80, ss. 107, 133; 7 & 8 G. 4, c. 53, s. 32; 2 W. 4, c. 16, s. 10. Therefore, a person who buys from one who is not a licensed distiller, and without a permit, sweet spirits of nitre, the duty on which has not been paid, is not liable to the penalties imposed by those statutes.

The term "spirits" in those acts signifies an inflammable liquid produced by distillation either pure, or mixed only with ingredients which do not convert it into some article of commerce not known in common parlance under the general appellation of "spirits." *Attorney-General v. Bailey*, 1 Exch. R. 281.

2. *Appeal against conviction by commissioners*.—By 7 & 8 G. 4, c. 53, s. 82, the officer of excise proceeding by information for any offence against that act, as well as any party aggrieved by the decision of justices adjudging on such an information, may appeal to the Quarter Sessions, on giving notices of appeal pointed out by the act. By section 84, the Quarter Sessions are to rehear upon oath, and to re-examine the same witnesses, and to reconsider the same evidence and the merits of the case, wherever the original judgment appealed against shall have been given, and shall not examine any evidence, or any witness or witnesses, other than, or different from, the evidence of the witness or witnesses which and who shall have been examined before the justices at the hearing of the information on which the original judgment shall have been given, and may reverse or confirm in whole or in part the judgment appealed against, or give such new or different judgment as in their discretion they think fit.

An information on this act contained four counts. The justices convicted on the fourth, and acquitted on the others. The defendant gave notice of appeal from the judgment to the Quarter Sessions, but the officer prosecuting on the part of the Crown gave no notice of appeal against the judgment of acquittal on the first three counts: *Held*, that the defendant's notice of appeal was limited to the judgment of the convicting justices on the 4th count, and that if, on the hearing, the Court of Appeal was of opinion that the count was not sustained by the evidence, but that the second count was, the judgment must be altogether for the defendant. *Reg. v. Gamble*, 16 M. & W. 384.

GAMES' AND WAGERS' ACT.

8 & 9 Vict. cap. 109.—*Recovering back stake deposited*.—Where a sum of money was deposited in the hands of a stakeholder to abide the event of an illegal wager; but before the determination of such wager, one of the parties gave a notice of his abandonment of the wager, and requiring the stakeholder to repay his deposit: *Held*, that an action for money had and received to the use of the party giving the notice, lay to recover from the stakeholder the amount of such deposit, notwithstanding the provision of the 8 & 9 Vict. c. 109, s. 18: *Held* also, that if the statute had been a good answer in bar it must have been specially pleaded. *Varney v. Hickman*, 35 L. O. 329.

GUARDIANS OF UNION.

See *Corporation*, 1.

INTEREST ON BOND.

See *Corporation*, 2.

JUDGMENT IN SUPERIOR COURTS.

See *County Courts' Act*, 2.

[The remainder of this Section will be given in our next Number.]

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SATURDAY, AUGUST 26, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

LEGAL RESULTS OF THE SESSION OF PARLIAMENT.

THE Session which commenced in November last, and which has been as remarkable for its protracted duration, as for the number and importance of the public events which have occurred since its commencement, is at length drawing to a close. It is expected, that the prorogation will take place during the next week.

The monetary crisis which preceded the assembling of Parliament; the series of revolutions which have convulsed the continent of Europe, since the month of February last, and the political excitement which has prevailed in this part of the kingdom, as well as in Ireland, have certainly been peculiarly unfavourable to that deliberate and careful consideration, without which it is scarcely possible to expect that measures effecting extensive changes in the law or its administration, can be either salutary or satisfactory. It must be admitted, however, that notwithstanding the multitude and diversity of subjects urgently pressing on the attention of the legislature, many questions involving alterations in the law, have been submitted to both Houses, and obtained a fair share of consideration and attention; and although some measures of great practical importance have been rejected or postponed, it cannot be said that the legal results of the Session are unimportant or uninteresting, either as regards the profession or the public.

Amongst the measures which have been
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withdrawn or postponed until next Session, we have to enumerate Mr. Ewart's Bill to establish an *Appeal in Criminal Cases*, and that introduced by Sir William Clay, for extending the *Remedies against the Hundred*, the scope and objects of which have been fully discussed in our former numbers. During the last week, also, the Bills introduced by the Lord Chancellor, for the *Regulation of Charitable Trusts*, and the *Regulation of Chancery Proceedings*, to both of which our readers' attention has been directed, after having passed the House of Lords, were abandoned in the lower House, by Lord John Russell. Admitting that the principles upon which these bills proceeded were unexceptionable, and believing that they were framed with no other design than the laudable one of correcting admitted evils in the administration of justice, still we deem it matter of congratulation that, at the period and in the shape they were introduced, they did not receive the assent of the legislature. The experience of the last twenty years suggests so many instances in which hasty legislation, with the design of amending the law, produced evils of greater magnitude than those endeavoured to be corrected, that we confess we look with considerable apprehension on bills introduced towards the close of the Session, and involving legal changes. The bills last adverted to were submitted to parliament at so advanced a period, that it was utterly impossible their provisions could be sufficiently known to, much less maturely weighed and considered by, those most interested in their

operation, and capable of pointing out the particulars in which they might prove defective or objectionable. The *Charitable Trusts Regulation Bill*, as we had occasion to observe, was obviously imperfect in some most important particulars, which would have materially interfered with its operation, if indeed they did not mar all the benefits intended to result from its provisions. We trust, however, that both the bills to which we have last alluded will be re-introduced at the commencement of the next Session, with such alterations and improvements as, upon weighing the suggestions submitted to him, the Lord Chancellor may consider expedient to adopt.

In reviewing the measures relating to the law which have obtained the sanction of the legislature during the present Session, the acts 11 & 12 Vict. c. 42 and 43, and 11 & 12 Vict. c. 44, which were presented to parliament by the Attorney-General, and will probably be known hereafter as Sir John Jervis's Acts, recommend themselves to our observation, as well from their importance as from their bulk, occupying no less than 94 pages in the folio edition of the statute book. The first of these acts is intended to facilitate the performance of the duties of a justice of the peace out of sessions, in respect to persons charged with indictable offences; the second, as regards summary convictions and orders; and the third is intended to protect justices from vexatious actions in respect of acts done in the execution of their office. These acts were originally meant to be accompanied by another, regulating the holding of Courts of Special and Petty Sessions; but, for some reason which has not been publicly explained, the Attorney-General thought fit to abandon this branch of his plan some months ago, and if, as we have heard it stated, these measures are intended to codify the law of procedure before magistrates acting in all other cases but as members of the Courts of Quarter Sessions, the plan is obviously imperfect. The new acts, however, come into operation on the 2nd October next, and we propose, before that period arrives, to direct the attention of our readers to the subject more in detail, and to publish an Abridgement of the Statutes, and an Index to the Forms prescribed by them, which are in number no less than seventy-five. Only second in importance to the acts brought in by the Attorney-General, are those which Mr. Baines has had the good fortune to carry through parliament, we believe we are justified in saying, with general

concurrence, and without the introduction of any amendments calculated to diminish their efficiency. We refer to the *Poor Removal Orders Act*, 11 & 12 Vict. c. 31, printed, with a commentary, *ante*, pp. 297 and 8, and the act for the removal of defects in the *Administration of Criminal Justice*, which obtained the Royal Assent on the 14th instant, and the leading provisions of which were described in a former number, *ante*, p. 112. These measures, as we have already taken occasion to remark, were carefully digested before they were laid upon the table of the House of Commons, and every clause indicates a practical knowledge of the matter on which it is attempted to legislate. We shall be at once surprised and disappointed if these acts do not operate beneficially in the administration of two branches of the law, with respect to which it has long been felt that some alteration was desirable.

Lord Campbell's *Criminal Law Administration Amendment Bill*, by which it is proposed to provide a better mode than that now in use, for deciding difficult questions of law arising in criminal trials, has not fared so well in its progress through either House of Parliament, as the bills introduced by the hon. and learned member for Hull. In the bill originally introduced by Lord Campbell, it was proposed that Courts of Quarter Sessions, as well as Courts of Quarter and Terminer, should have the power of reserving any questions of law, upon which a serious doubt was entertained, for the consideration of the judges, and that such Courts might, in the meantime, respite execution, or defer giving judgment, until such question had been discussed and decided. When this measure was considered in the House of Lords, the proposal to refer points of law from the Quarter Sessions was warmly and successfully resisted by Lord Denman, who stated that the judges were unanimously of opinion, that appeals from the Quarter Sessions ought not to be referred to the judges, and that such a measure would lead to the greatest possible inconvenience. Overpowered by the weight of authority, Lord Campbell appears to have submitted without a division to the omission of the most important provision of his bill, that by which it was proposed to give the Chairmen of Quarter Sessions power in criminal cases to reserve any point of law for the opinion of the Judges of Assize. By the House of Lords amendments, there is to be no appeal whatever from the Quarter Sessions on questions

of Criminal Law; and if the Chairman presiding in that Court feels that any serious difficulty arises, he may either direct the acquittal of the party in whose case the doubt arises, or, in case of conviction, he may communicate his doubts to the Secretary of State, who in his turn refers the matter to the Attorney and Solicitor-General. Should the opinion of the law officers be favourable to the accused, however, it does not get rid of the conviction, as the Home Secretary can only grant a pardon, which merely absolves from punishment, whilst the conviction remains. The bill has undergone further amendments in the House of Commons, with which we are not yet acquainted, but mutilated as it has been, we have reason to know that it still contains a provision, which we consider a decided improvement on the existing practice. When the judges think fit to reserve any point arising in a criminal case for consideration, the practice hitherto has been, as our readers are aware, to submit it to the fifteen judges *privately*, and when they have come to a determination on the subject, the result is notified to the parties concerned, but no judgment is *publicly* pronounced, and the profession and the public remain in ignorance of the grounds upon which the judgment proceeds. The decision in any one case, therefore, cannot be safely feened upon in another, as it is impossible to know the reasons upon which the judgment is affirmed or arrested. Lord Campbell's Bill, however, besides authorizing six judges instead of fifteen to decide upon cases reserved for their consideration by the judge or commissioner presiding at any Court of Oyer and Terminer or gaol delivery, also provides, that the judgment in such cases shall be delivered in open Court, after hearing the counsel or parties, "in like manner as the judgments of the Superior Courts of Common Law at Westminster are now delivered," an alteration which we think could not fail to operate beneficially upon the administration of criminal law, by rendering it more certain as well as more satisfactory. This bill was returned to the House of Lords for the consideration of the Commons' amendments, which were agreed to, and we shall probably be enabled in our next to announce that it has received the Royal Assent. We must also defer till then our notice of *The Joint-Stock Companies Act*, which received the Royal Assent on the 14th instant, and of some other measures relating to the law, which claim an early consideration.

LAW OF MARRIAGE.

PROHIBITED DEGREES OF AFFINITY.

THE Report of the Commissioners on the state and operation of the Law of Marriage, relating to the prohibited Degrees of Affinity, and to Marriages solemnized Abroad or in the British Colonies, which has just been published, is a very able production, accompanied by a very extraordinary and interesting mass of evidence, collected evidently with great skill and industry. The promoters of the inquiry, with a view to the alteration of the law, it must be acknowledged, have presented a strong case for the consideration of parliament.

We shall take an early opportunity of laying the Report before our readers, and follow it by a statement of the *pros* and *cons* of the proposition. Apart from the moral and social, as well as the religious bearing of the question, many most important legal considerations are involved in it, which it will be our duty to consider before the next Session of Parliament.

The Commissioners, it will be recollected, are:—The Bishop of Lichfield, Mr. Justice Williams, Dr. Lushington, Mr. J. Stuart Wortley, Mr. A. Rutherford, and Mr. A. R. Blake. Their opinions are, no doubt, entitled to great respect, and they come to the conclusion that the statute 5 & 6 W. 4, has failed to attain its object, and they doubt whether any measure of a prohibitory character would be effectual. They leave to the wisdom of the legislature to consider whether any and what measure should be introduced for a change of the law either on the side of relaxation or stricter prohibition.

SALARIES OF THE COUNTY COURT JUDGES.

THE Home Office has recommended a proceeding with reference to the Judges of the County Courts, the expediency of which appears to be at least questionable. As most of our readers are aware, since the County Courts' Act came into operation, the Judges have been remunerated by the receipt of the fees prescribed by the act; and from the returns made to the House of Commons of the business done in the County Courts, and the fees received by the officers respectively, for the first nine months after the act came into operation, it appeared that the judges were in the receipt of an income averaging from 1,700*l.* to 1,800*l.* per annum. The total amount of the judges' fees received from March to Dec. 1847, inclusive, was 82,652*l.* 14*s.* 5*d.*

The sums received depending on the amount of business in each Court, were necessarily very unequal, as some of the judges had emoluments which, extending the estimate to a year, would have produced an income of above 3,000*l.*, whilst in other cases, the fees would scarcely have reached 1,200*l.* The 9 & 10 Vict. c. 95, s. 39, empowered her Majesty, with the advice of her Privy Council, to order the judges and other officers to be paid by salaries instead of fees, and the 40th section provided, that the greatest salaries to be received by the judges should be 1,200*l.* By an order of Council, which appeared in the Gazette of Friday, the 18th instant, the salaries of all the sixty judges of the County Courts have been fixed at 1,000*l.* per annum, to take effect from the 30th September next. This is no doubt perfectly legal, but is it wise? The amount of business transacted in these Courts, as we have always understood, has rather exceeded than fallen short of the expectations of those who advocated the measure. Under an act of last Session, (the 10 & 11 Vict. c. 102,) the jurisdiction previously exercised by the Commissioners for the relief of Insolvent Debtors on Circuit, was transferred to the judges of the County Courts, and by that means an additional duty was imposed upon them, not contemplated when the Courts were originally established. It was very generally expected, therefore, that when the Privy Council thought it expedient to fix the amount of the salaries, the maximum sum specified in the act would have been taken. £1,200 per annum certainly cannot be considered as an exorbitant salary for a barrister of adequate acquirements, who abandons his professional prospects for the public service; and although that sum would have been a considerable reduction from the amount hitherto received by the judges in the name of fees, still it might have been contended, and with some reason, that the office of judge was accepted with notice that the salary was not to exceed that sum. By fixing the salary at a sum less than 1,200*l.*, great dissatisfaction has been created, and we have heard it hinted, that some of the judges who are considered the most competent, and previously held the highest position in the profession, have intimated an intention of resigning. Be this as it may, we are satisfied that no advantage to the public is gained by saving 12,000*l.* per annum, and rendering 60 officers discontented, upon whose diligence, zeal, and

energy so much depends as upon the judges of the County Courts. Neither the principle upon which the County Courts Act is framed, nor the appointments under it, have our approval, and we see no reason to change or qualify the opinions frequently expressed in this publication upon the matter; but we greatly doubt if the administration of justice in the new Courts will be improved by the step now taken; and we shall be much surprised if the suitors do not soon discover that a change has taken place, which will not increase the popularity of the new institutions. The late order in Council does not interfere with the emoluments of the clerks, but if it should be hereafter deemed expedient to fix their salaries, we presume that a sum will also be named below the limit mentioned in the act, which is 600*l.*

The following is the Order in Council:—

ORDER IN COUNCIL.

At the Court at Osborne House, Isle of Wight, the 11th day of August, 1848, present the Queen's most excellent Majesty in Council.

Whereas there was this day read at the Board, a Report of the Right Honourable the Lords of a Committee of Council, dated the 10th instant, in the words following, viz. :—

“Your Majesty having been pleased, by your Order in Council of the 30th day of October last, to refer unto this Committee for consideration an act passed in the 10th year of your Majesty's reign, intituled, “An Act for the more easy recovery of Small Debts and Demands in England,” with directions to report to your Majesty what order, in their opinion, it might be proper to make for paying the Judges and certain Officers of the County Courts, established under the provisions of the said act, by salaries instead of fees.

“The Lords of the Committee, in obedience to your Majesty's said order of reference, have taken the said act into consideration, and having ascertained that, in accordance with the provisions of the said statute, the Lord High Chancellor of England had appointed 60 judges to preside over the whole of the said Courts, are pleased humbly to report, as their opinion, to your Majesty, that an Order in Council, to the effect following, should be made for the purposes of the said act, that is to say :

“That, from and after the 30th day of September, 1848, the 60 Judges of the Courts held under the provisions of the said act of the 10th year of your Majesty's reign should be paid by salaries; and that each of such 60 judges should be paid 1,000*l.* per annum, at such times and in such manner as the Lords Commissioners of her Majesty's Treasury may think fit to direct.”

And whereas notice was given and published in the London Gazette, on Tuesday, the 2nd

of November last, that, after the expiration of one calendar month from the date of the publication of that notice, her Majesty, with the advice of her Privy Council, would take into consideration the propriety of making an order, under the provisions of the said act, for paying the judges, clerks, bailiffs, and officers of the said Courts, by salaries instead of fees, or in such other manner as might be deemed expe-

Her Majesty, having taken the premises into consideration, is thereupon pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, that, from and after the 30th day of September, 1848, the 60 judges of the Courts held under the provisions of the said act, shall be paid by salaries instead of fees; and that each of such 60 judges shall be paid, as and for his salary, 1,000*l.* per annum, at such times and in such manner as the Lords Commissioners of her Majesty's Treasury may think fit to direct.

C. C. GREVILLE.

CHARITY TRUSTS AND CHANCERY BILLS.

THESE Bills, to which we have several times adverted, have been postponed for the present Session.*

We understand that numerous remarks and suggestions were prepared by the Council of the Incorporated Law Society on various clauses in the Charity Trusts' Bill, and submitted to several Members of Parliament.

The following discussion took place on Friday the 18th instant, relating as well to the Chancery as the Charity Trusts' Bills:

Mr. G. J. Turner asked the noble lord at the head of the government what course he proposed to pursue, with reference to several measures of considerable importance. The first of those measures was the bill for the Regulation of Charitable Trusts, which had only reached that house on Monday, and was not in the hands of members until Tuesday. He did not think it probable that the house was likely to agree as to the best mode in which charities could be administered without much discussion and deliberation; and he hoped, therefore, that the noble lord would consent to postpone this measure until next session. Two other measures had reached that house last week relating to the Court of Chancery,—one of those bills relating to the fees in Chancery. The noble lord would be aware that a committee of that house had sat on the subject of the fees in the Court of Chancery; that committee had reported resolutions to the house, and their report would probably be in the hands of mem-

bers very soon after the commencement of the ensuing session. He thought, therefore, the noble lord would feel that these measures could not properly be submitted to the house until hon. gentlemen were in possession of the report of the committee.

Lord J. Russell replied, that he had consulted with the Lord Chancellor on the subject of the Charity Trust Regulation Bill, to which the noble and learned lord attached very great importance, and he (the Lord Chancellor) expressed a hope that there was not likely to be any very serious opposition to that bill, and that it might be proceeded with. If, however, as the hon. and learned gentleman had intimated, it was a measure which would occasion very considerable discussion, and which was likely to occupy much of the time of the house, he (Lord J. Russell) would certainly not be disposed to press the bill in the present session. (Hear, hear.) With regard to the other bills to which the hon. and learned gentleman had referred, he (Lord J. Russell) had no hesitation in saying that it was not his intention to proceed with them this session.

Mr. Hume hoped that if the Charity Trust Regulation Bill was withdrawn, the noble lord would bring in a bill requiring trustees to lay an account of their charities before the house.

Lord J. Russell would certainly be ready to carry into effect any part of the bill which might meet with the general assent of the house.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the present Session of Parliament, printed in this and the last volume of the *Legal Observer*, are as follow:—

Extending Time for making Railways, vol. 35, p. 204.

Regulating the Queen's Prison, p. 558.

North American Passengers, p. 581.

Crown and Government Security, p. 600.

Oaths in Chancery, vol. 36, p. 7.

Stamp Duties Assimilation, p. 8.

Trial of Controverted Elections, p. 23.

Removal of Aliens, p. 182.

Annual Indemnity, p. 221.

Suspension of the Habeas Corpus Act (Ireland), p. 280.

Poor Removal Orders, p. 298.

Commons Inclosure, p. 324.

GAME CERTIFICATES.

10 & 11 VICT. c. 29.

An Act to enable Persons having a Right to kill Hares in England and Wales to do so, by themselves or Persons authorized by

* The Petty Bag Office Bill has passed the Commons, and remains for second reading in the House of Lords.

them, without being required to take out a Game Certificate. [22nd July, 1848.]

1. 48 G. 3, c. 55.—52 G. 3, c. 93.—3 & 4 Vict. c. 17.—*Persons in the occupation of inclosed ground, and in certain cases owners, may kill hares without a game certificate.*—Whereas by an act passed in the 48 G. 3, intituled “An Act for repealing the Duties of Assessed Taxes, and granting new Duties in lieu thereof, and certain additional Duties to be consolidated therewith, and also for repealing the Stamp Duties on Game Certificates, and granting new Duties in lieu thereof, to be placed under the Management of the Commissioners for the Affairs of Taxes,” and by an act passed in the 52 G. 3, intituled “An Act for granting to his Majesty certain new and additional Duties of Assessed Taxes, and for consolidating the same with the former Duties of Assessed Taxes,” and by an act passed in the 3 & 4 Vict., intituled “An Act for granting to her Majesty Duties of Customs, Excise, and Assessed Taxes,” certain duties of assessed taxes were granted to her Majesty the Queen upon, amongst other things, every person who shall use any dog, gun, net, or other engine, for the purpose of taking or killing any game whatever, or shall assist in any manner in the taking or killing of any game: And whereas by divers laws now in force penalties are imposed on all persons taking or killing, or assisting in the taking or killing of, amongst other things, any game whatever, who shall not have obtained a certificate of the due payment of such duties: And whereas it has been found that much damage has been and is continually done by hares to the produce of inclosed lands, and that great losses have thereby accrued and do accrue to the occupiers of such lands; and it is expedient that persons in the actual occupation of such inclosed lands, or the owners thereof, who have the right of killing game thereon, should be allowed to take, kill, and destroy hares thereon, without the payment of the said duties of assessed taxes, and without the incurring of any of the penalties above mentioned: Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act it shall be lawful for any person, being in the actual occupation of any inclosed lands, or for any owner thereof who has the right of killing game thereon, by himself or by any person directed or authorized by him in writing, according to the form in the schedule to this act annexed, or to the like effect, so to do, to take, kill, or destroy any hare then being in or upon any such inclosed lands, without the payment of any such duties of assessed taxes as aforesaid, and without the obtaining of an annual game certificate.

2. *Authority to kill hares to be limited to one person at the same time in any one parish, and such authority shall be sent to the clerk of the Petty Sessions who shall register the same.*—

authority revoked, notice to be given of the same.—Provided always, and be it enacted, That no owner or occupier of land as aforesaid shall be authorized to grant or continue, under the provisions of this act, authority to more than one person, at one and the same time, to kill hares upon his land within any one parish; and that he shall deliver the said authority, or a copy thereof, or cause the same to be delivered, to the clerk of the magistrates acting for the Petty Sessions Division within which the said lands are situate, who shall forthwith register the same, and the date of such registration, in a book to be kept by him for such purpose, which book shall be at all reasonable times open to the inspection of the clerk of the Commissioners acting in the execution of the Acts for assessed taxes or for any of the collectors of assessed taxes within such district; and the said authority, so soon as it shall have been registered as aforesaid, shall be held good until after the 1st day of February in the year following that within which the same is granted, unless the same be previously revoked, and notice of such revocation be given to the clerk of the magistrates as aforesaid; and the said registered authority, or the unrevoked register thereof, shall be good and sufficient evidence of the right of the person to whom authority is given by the same to kill hares upon the lands mentioned within the same without having obtained an annual game certificate.

3. *Persons not to be liable to tax on game-keepers.*—And be it enacted, That no person so directed or authorized to kill any hare as aforesaid shall, unless otherwise chargeable, be liable to any duties of assessed taxes as game-keeper.

4. *To extend to coursing or hunting.*—And be it enacted, That from and after the passing of this act it shall be lawful for any person to pursue and kill, or to join in the pursuit and killing of any hare by coursing with greyhounds, or by hunting with beagles or other hounds, without having obtained an annual game certificate.

5. *Not to authorize the laying of poison.*—Provided also, and be it enacted, That nothing herein contained shall extend or be taken or construed to extend to the making it lawful for any person, with intent to destroy or injure any hares or other game, to put or cause to be put any poison or poisonous ingredient on any ground, whether open or inclosed, where game usually resort, or in any highway, or for any person to use any fire-arms or gun of any description, by night, for the purpose of killing any game or hares.

6. *Agreements reserving game to be still in force.*—Provided also, and be it enacted, That where any tenant of any land for life or five, years, or otherwise, now is or hereafter shall be bound by any agreement not to take, kill, or destroy any game upon any lands included in such agreement, then and in all such cases nothing herein contained shall extend or be taken or construed to extend to authorize or empower such tenant to take, kill, or destroy

any hare upon any such lands so included in such agreement, or to authorize any other person to kill or destroy any hare upon any such lands.

7. *Interpretation of act.*—And be it enacted, That in the interpretation of this act the singular number shall extend to several persons and things as well as to one person or thing; and any word importing the plural number shall apply to one person or thing as well as to several persons or things; and every word importing the masculine gender only shall extend to a female as well as a male; and that the word "Agreement" shall include any covenant, proviso, promise, undertaking, condition, or reservation; and that the word "Parish" shall include any hamlet, township, tithing, or extra-parochial place; and for the purposes of this act the word "Night" shall be considered and is hereby declared to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

8. *To extend to England and Wales only.*—And be it enacted, That this act shall extend to that part of the United Kingdom called England and Wales.

9. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed during the present Session of Parliament.

SCHEDULE.

I A. B. do authorize C. D. to kill hares on ["my lands" or "the lands occupied by me," the case may be,] within the of [here insert the name of the parish or other place, as the case may be.] Dated this day of [here insert the day, month, and year.] A. B.

Witness.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

FIRST ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

The first portion of this valuable Report, will be found, *ante*, p. 302.

V. The Committee of Management next proceed to consider the *Office and Status of Attorneys.*

If the former state of the attorney be compared with his present condition and prospects, it will be found that changes have been made by various legislative and other measures, tending to lower the profession in public opinion, and to degrade it from an intellectual to a mechanical employment. The solicitor has been excluded from many of the avenues to distinction, which were formerly open to his industry and talents, and most of those official appointments which call for the exercise of the higher powers of the mind have been transferred, and often to the younger, the inexperienced, and

the least distinguished members of the bar. Thus attorneys have been gradually shut out from Commissionerships in Bankruptcy and Lunacy, from presiding in various local Courts, and from advocating the rights of their clients before many tribunals in which they were formerly accustomed to practise.

In the early period of our civil history, attorneys and solicitors were required by several rules of the Superior Courts to become Members of the Inns of Court or Chancery. The judges of those days considered them as no unfit associates, and thought they saw that the public advantage was connected with their elevation in the ranks of society. That policy has not been continued. The Benchers in recent times have considered it expedient to exclude them. Upon what principle this can be justified it is difficult to conceive.

The character of the profession is not a question which affects merely its members. The duties performed by the attorney and solicitor are of indispensable utility to the public—to their convenience—to their necessities—to the wants and exigencies of an extended commerce, and an advanced state of civilization. The vast and complicated affairs of the various classes of society, in a large and wealthy country, governed by a multiplicity of laws, cannot be well understood nor safely managed without the constant aid of an intelligent body of men, well versed in the principles and practical application of those laws.

To the agency of solicitors is confided the administration of the whole real and personal property of the United Kingdom. A large portion of it which is administered by Courts of Equity and in Bankruptcy, meets the view of the community chiefly by means of the public journals, but the far greater residue is administered by solicitors away from the eye of the public. Nor are his services confined merely to the pecuniary interests of the client. An attorney has often to exercise his skill and judgment to adjust disputes, and to reconcile the differences that disturb the peace and peril the happiness of families, and to deal with questions that touch the character and reputation of a client, affect his personal liberty, and endanger, it may be, even life itself. In a word, the services they render are co-extensive with the transactions, the rights, the duties, and the wrongs of all classes of civilized society, and even where the aid of counsel is called in, it is still to the solicitor, and to him only, that the client confides his interests.

If this be so, it may fairly be asked, are not the public deeply interested in the character and abilities of so important an agent—interested, therefore, that his just claims should be allowed, his rights maintained, and that the education and discipline, which are to qualify him for the skilful and faithful discharge of his duties, should be promoted and improved. . . . subjects, are not unworthy of the serious attention, and protecting care of the legislature.

The Committee, in order to obtain an ample

collection of facts and illustrations bearing upon the office and status of attorneys, have prepared a *Series of Questions* to be circulated amongst the members of the Association, the object being to point out those subjects upon which, under existing circumstances, they think it desirable to ascertain facts, and to collect the deliberate and unbiassed opinion of the profession; and there is no mode in which gentlemen can so effectually assist the Association in its future exertions on behalf of the profession, as by accompanying their answers with as many well authenticated instances as possible, for upon the number and weight of facts the Association must depend for public confidence and the utility and success of its measures.

The next topic of the Report is the *Grievances of the Profession*.

In adverting to what may be called the Grievances of the Profession, the Committee have not considered themselves limited to an enumeration of the hardships and annoyances which lie upon the surface, and to which the attention of professional men is at the present moment chiefly directed, but have felt it to be their duty to advert to the course of legislation for many years past in its influence upon the interest and character of attorneys.

"The tendency of modern enactments and changes will be found almost invariably to have been of an injurious character and affecting the great body of this branch of the profession. Regarding this as a public evil as well as a private injury, the Committee have considered that any report they could present would be imperfect which did not suggest some means for restoring the profession to their original and just position.

The hardships most generally complained of, many of which affect equally the suitor and practitioner, appear to be the following:—

1. The taxes on justice in the shape of fees, burdensome upon the attorney, fall still more hardly upon his client, and tend to bring reproach upon legal proceedings by swelling the costs apparently received by the attorney, but really by the State. Fees occur at every stage of a cause, and are paid for duties involving no responsibility, and of a character purely mechanical; strenuous efforts should be made for their abolition. To object to the extinction of fees that it would render litigation too cheap, and at the same time to establish cheap Courts in order that it may not be too expensive, appears sufficiently inconsistent. The various expenses, however, necessarily incident to a lawsuit must always operate as a sufficient check upon reckless litigation, and while in criminal cases, not only the judges and officers, but often the costs also of the prosecutor, his witnesses, counsel, and attorney, are paid from the public revenue, the Committee are of opinion that the general administration of justice should be provided for from the same source, and that to throw such a burden upon the suitor is unfair and unconstitutional.

2. The distance of the Courts from the Law

Offices and places of business retards the progress of legal proceedings, consumes the time and interrupts the duties both of counsel and attorneys. The Bar have become sensible of this, and have petitioned for a remedy.

Efforts should be perseveringly continued to unite the Courts of Law and Equity, the Chambers of the Judges, Masters, Registrars, and other officers under one roof. The want of accommodation for attorneys in the Courts, and especially for consultations with counsel, is a serious grievance. Take an example of frequent occurrence:

A conference at Westminster upon the settlement of important papers is required. When the counsel and attorney are collected, they have first to seek out a room, and with difficulty find one. To this they must take their way through what is called the "Robing Room." Here they are detained for a considerable time among the barristers dressing and undressing. Admitted at last to the "room," it is found cold, full of smoke, and continually intruded upon, the door being opened and shut every few minutes. The conference is consequently hurried and disturbed. In making escape from this den, the attorney is stopped with a demand of 5s. for the room; this paid, he proceeds down stairs, still in conference probably with counsel, when he is touched upon the shoulder, and finds that "something for the Usher" is required; and in this unsatisfactory, not to say disgraceful manner, are matters of the deepest importance to the public disposed of. Besides the complaints regarding the Courts at Westminster, it should be added that there is a serious want of accommodation for the public and the profession in the Courts of *Nisi Prius* in London and at the Assizes and Sessions in the country.

3. The apathy of attorneys for a long period has invited an aggression, not only upon their own privileges, but upon those of their clients, of a very startling character. A growing inclination is observable to establish the position that with the brief delivered to counsel the rights of the clients, and not these only but his feelings, and his character also, are placed exclusively in the counsel's hands, so that thenceforth the client himself, or his attorney, has no voice or power in the cause. It must however be remarked that the attorney and not the barrister is the chosen representative of the client, the barrister being generally the nominee of the attorney. But it must also be obvious that if during the progress of the sittings or assizes when briefs with heavy fees have been delivered, and the parties, their attorneys, and witnesses, have at great expence and inconvenience been collected together, a reference should be literally forced upon the attorney and his client, and their own opinion and wish in the affair altogether disregarded, trial by jury as a right can no longer be said to exist. The Committee by no means deny that many cases, involving, for example, matters of account, ought to be referred, and that it would be unreasonable to occupy the time and atten-

tion of the judge and the jury with minute questions and details, which could be more satisfactorily adjusted out of Court. In these cases it would perhaps be desirable that either of the parties should be able, immediately after issue is joined, to obtain a judge's order to refer; but if attorneys are prepared to submit that their own judgment upon these matters shall be sacrificed to the opinion or convenience of counsel (often of necessity unacquainted with many of the circumstances affecting the propriety of referring the cause), they will betray their client's interests and their own professional character.

4. Attorneys and Solicitors, as the Committee have before remarked, were formerly required to be members of one of the Inns of Court or Chancery, and believing that whatever tends to raise the tone and character of their body must be regarded as a great public advantage, they are of opinion that it is a duty to the community in general, not less than to themselves, that they should resist regulations of a novel, arbitrary, and degrading character, which exclude them from those Inns.

5. The Inns of Court have long allowed their members to practise under the Bar as Special Pleaders and Certificated Conveyancers, the legitimate province of the latter consisting in the drawing of deeds and other instruments, and advising on questions of title.

Of late years, however, the Certificated Conveyancers have assumed the office of solicitor in acting for clients and in communicating with professional men upon conveyancing matters in the same way as solicitors. They frequently call in the aid of other conveyancers to advise on titles and settle drafts. They themselves engross the deeds, and they make out bills of costs, charging, in many respects, as solicitors charge, in amount.

Now, since the legislature have thought it necessary to require that no person should act as an attorney or solicitor without first serving a clerkship of five years, and being examined and admitted by the judges, and without the payment of very heavy duties, it is manifestly unjust and impolitic, that persons neither similarly taxed, nor similarly qualified, and not amenable in a summary way, like attorneys, for negligence, want of skill, or improper conduct, should nevertheless be allowed to practise in a branch of the profession, requiring great knowledge and experience, and wherein mistakes and errors are attended with most serious consequences.

6. The vast increase of the private business of the Houses of Parliament has brought forward a great number of persons who act as Parliamentary Agents. Formerly, some of the clerks or officers of the two Houses, and a few solicitors, acted in that capacity. At present, however, not only solicitors who, from a knowledge of the rules of evidence, the laws of property, and the practice of parliament, may be fairly supposed qualified, but persons whose qualification consists in merely signing their names in the Private Bill Office, are allowed to

act as Parliamentary Agents. The subject has already attracted much notice, and requires more until it be remedied.

7. By their legal education, practical knowledge, and habits of business, attorneys and solicitors are more particularly qualified for discharging the duties of solicitorships and stewardships than any other class of men. The public good, therefore, requires that the legislature, instead of sanctioning the employment of barristers in offices not within their legitimate province, and depriving attorneys of the honours and emoluments formerly enjoyed by them, should seek rather to increase the occasions on which they may be usefully and honourably employed. The inducements for men of learning and talent to enter upon the profession of a solicitor should be extended rather than curtailed, or it must be expected that the public will see an inferior order of men gradually occupy their place.

8. Prior to the abolition of fines and recoveries, every attorney or solicitor who had a fine or recovery to pass, was entitled to put his own name into the writ of dedimus, and receive the fees for the business now done by Perpetual Commissioners under the Fines' and Recoveries' Act. The Chief Justice appoints only a few attorneys in London, and makes a selection from persons of a certain standing and influence in the country.

Considering the diminution of the emoluments of the profession in many departments of practice, it is but reasonable that the privilege should be restored. It seems to be within the power of the Chief Justice to remedy this grievance by appointing all certificated attorneys to execute the office.

9. There are many offices of a legal character held by persons neither educated in any branch of the law, nor acquainted with the practice of the Courts, the duties of which should be performed by those who have gone through the discipline and habits of a solicitor's office.

Connected with this class of unqualified persons a still larger body may be noticed, consisting of house agents, accountants, and even stationers, and other persons, who undertake to transact on cheap terms many kinds of professional business, employing some practitioner of low character and position for the prosecution of actions and suits. The interests of the profession and the public require that such persons should be discountenanced, and, if found to infringe the law, punished.

10. The committee will offer some general remarks on the subject of fees and emoluments, at the conclusion of the present enumeration of special grievances, observing only now, that they claim for attorneys and solicitors merely a just remuneration for their skill and labour, for the expense of their education, for the capital they are obliged to employ, and for the anxiety and responsibility attaching to every step in their several branches of practice. The continual reduction of the solicitor's fees proceeds upon an erroneous estimate of the profits of professional men, and a narrow and

mistaken view of what the true interests of the community require.

11. Not only have attorney's been deprived of many of the offices properly belonging to their branch of the profession,—not only have their emoluments been reduced, to an extent not defensible upon grounds either of justice or of expediency, but they are still subjected to a taxation of a peculiar and excessive character. The stamps on the articles of clerkship and admission, amount to 145*l.*, and the various fees for enrolment, examination, admission, and for commissions to swear affidavits and act as Masters Extraordinary in Chancery, extend the amount to 165*l.* or more, on every attorney and solicitor. But upon the attorney, in addition to his share of an income tax, and the ordinary burthens of the State, is imposed the further annual charge of 12*l.* on town, and 8*l.* on country solicitors for the privilege of exercising their vocation. This tax has always been loudly, and as we think, justly complained of. It is not levied on the members of the clerical or the medical profession, in any one of the several branches, nor on the higher grade of the legal profession, nor is it proportioned to the extent of practice, and consequent profits of the class on which it is exclusively imposed. One fact, alone, is sufficient to prove the heaviness and severity of the burthen. Of the attorneys on the Roll, 266 were compelled last year to leave their certificate duty unpaid until after the period when their names could appear amongst those of their brethren in the Law List, and this, to country attorneys in particular, involves loss not only of repute but of practice, and as many as 170 having neglected the payment for more than a year were involved in an actual disqualification from practice, until after a special application to the Court. The Committee are aware, indeed, that attorneys are not the only class subjected to this species of tax, but they consider its imposition upon the members of any particular trade or calling to be unjust, impolitic, and opposed to all sound principles of taxation.

Against this unjust imposition, the Committee of Management have presented, in the name of the Association, a petition of remonstrance to the House of Commons.

VI. The Committee conclude their Report with the following considerations, showing the Necessity for the Association, and the Measures recommended to be adopted:

Having specified some of the evils to which, and their remedies, the attention of this Association ought to be immediately directed, the Committee cannot avoid noticing one remarkable fact, that whatever may have been the changes effected in modern legislation with the law, the interests of attorneys have been entirely, and it might seem designedly, disregarded, and that in cases where there existed no conceivable opposition between the public interest and that of the practitioner. It may be very proper that process should be

rendered of a less expensive character, that pleadings should be shortened, that Local Courts should be established, and that the expenses of law proceedings and legal documents should be diminished. They are very far from denying that in these and similar particulars, the public good ought to be consulted, but they deny that it is for the public good, that the position and emoluments of solicitors should be reduced to so low a scale, as to discourage the admission of men of respectable station and liberal education, and to crowd their Roll with practitioners of an inferior class. The truth is, that the impression having become general, that attorneys are an affluent body of men, and the profits of their profession too large, it seems to be assumed, that to curtail their emoluments is a laudable, as it is certain to be a popular, exercise of the legislative power. The holders of sinecure and patent offices have received in the shape of greatly increased fees, the compensation which is never awarded to the legal practitioner, who has paid dearly for the privilege of practising, and whose labour, time, skill, and responsibility it might have been thought entitled him to at least equal consideration.

Again, many of the subordinate officers of the Court are in possession of large incomes. While no one pretends that the rights, the interests, the feelings, the position of a solicitor are in these matters even taken into account, and thus the result of many years of injustice on the part of others, and of supineness on their own is, that attorneys, with all the intelligence they are expected to possess, and all the responsibility which they must bear, cannot but see that their position when altered is altered for the worse; never altered to be improved.

Even the public at large are beginning to suspect the real state of the case; for the number of clerks articulated of late years, is in an inverse ratio to the increase of the population. From a return presented to the House of Commons in 1845, it appears, that while from 1833 to 1839, the number of articulated clerks averaged 528 per annum, during the next five years the average had fallen off to 478. In fact the number articulated in 1833-4, was 585, and in 1843-4, it had sunk to 483.

Now it is impossible to deny, and the Committee cannot disguise their own opinion, that the total disregard of the interests of attorneys to which they have referred arises mainly from an unfavourable feeling, however induced, towards the profession, on the part of the legislature, shared in by at least a portion of the public, and any amelioration of their position must be of an insufficient character which stops short of a remedy more or less complete for this master evil. Particular measures may be adopted, but no effort which attorneys can make will be fully successful until the public mind is prepared to consider the questions affecting them in a calm and unprejudiced spirit.

The first recommendation, therefore, which the committee would make is, that instead of confining the language of complaint to their

own body, and despairing of success from without, statements should from time to time be brought before the public and official authorities, embodying the views of the profession, detailing the matters of which they complain, and demonstrating their injustice and impolicy, and this in a manly and proper tone, and not in a narrow and mercenary spirit. By this means they believe that the Association will create an interest precisely where they should most desire to do so, especially amongst those, whether upon the bench or in the legislature, who from their established reputation and the elevated character of their own minds, possess the greatest influence upon that of the public. The Committee would also urge the appointment of a Parliamentary Committee in both Houses, before which the various topics they have touched upon and others affecting the interests of solicitors may be brought, but to attempt this with any hope of a successful issue, the Association must first convince the minds and enlist the sympathies of persons high in station and character, and it can hardly be needful to add that the Association may reckon with confidence upon the cordial co-operation of those of their own body who have seats in parliament.

2. In order to carry out this view, the Committee would suggest that these statements should be occasionally communicated to respectable newspapers in town and country, and to other periodicals, inviting an attentive consideration of the objects and the advocacy of their views so far as in the judgment of their editors their claims might appear to be just, and calculated to promote the general good. The great object in these communications must be to show that the members of the Association do not urge their demands upon narrow and merely selfish grounds, that they only ask for fair inquiry, leaving it to the decision of all unprejudiced and right-minded men, whether it is expedient that persons to whom such important trusts are confided as the attorneys of this kingdom, involving a powerful influence over the minds and conduct, and to a considerable extent, the property of their clients, enabling them either to foster a spirit of litigation, or to promote the peace and happiness of families and neighbourhoods, whether it is for the good of the public that such a body of men should be pauperised in their circumstances and lowered in their position; or whether it is not a far wiser and safer policy to attract to their number persons moving in the ranks of gentlemen, men of liberal and enlarged views, and of elevated principle.

3. The Committee further recommend that the members of the profession who may have clients in either branch of the legislature, should endeavour, by the circulation of such statements, and by personal interviews and explanation, to enforce the same objects. The subject has already received the attention of the legislature, and upon which a Committee has made an elaborate Report in consonance with these views.

4. Feeling the great importance of united action, the Committee recommend that every solicitor in the kingdom should become a member of one of the Local Law Societies now existing, or hereafter to be established. Scattered and divided, the profession has been weak; combined, their power will be, for the accomplishment of every reasonable object, irresistible. The extension of Law Societies will moreover serve to promote fair and honourable practice, and thus raise the professional character.

5. With a view also of gradually raising the tone and position of the profession, the Committee also recommend that a higher degree of classical literature, of science, and general knowledge, than is ordinarily possessed, should hereafter be required, before the clerk is allowed to be attitled. And, as an encouragement to the candidate, that means should be taken to provide a fund for prizes, and that some other mark of distinction should be granted to those who, upon a second examination to be instituted with that object, should be found to possess a profound and accurate acquaintance with the various topics of general and legal knowledge.

6. While the Committee have recommended that measures should be adopted to counteract the prejudices now existing in the public mind, they would urge the continued circulation amongst their own body of information upon the state and prospects of the profession, and the manner in which the public interest is thereby affected. They would add, that between this Society and the various Provincial Law Societies, it is important that continual communications should be kept up.

The Committee would beg to remark, that although there exists abundant reason for watchfulness and exertion, there is, in their opinion, no ground for despondency. If the interests of the profession have been assailed from without, they rejoice to know that the practice of solicitors in late years has been of a very improved character; and it is but just to add, that this improvement in a great degree must be attributed to the establishment and operations of the *Incorporated* and the various *Provincial Law Societies*, and to the facilities now afforded by means of these Societies for frequent and friendly communication. The members of the Association will not expect that evils of many years' growth are to be eradicated at once. It is an important fact, and a satisfactory sign, that the great majority of solicitors are at length prepared to look steadily at the difficulties and anomalies of their position, and to unite together for their remedy; and the hope of success arises mainly from the consideration that the Committee believe that their claims are just, that those claims will be urged in no selfish, mercenary, or unbecoming spirit, and that in whatever is attempted the members of the Association will be actuated by a sense of duty to themselves, doubtless, but to their clients also, and to the community of which they are members, and

whose interests upon an extended view of the subject they believe to be identical with their own.

Whilst the Committee enforce the policy of increasing the number of Provincial Law Societies and enlarging the numbers of this Association;—whilst the collection and communication of information on the state and interest of the suitors as connected with the due administration of justice, should constantly engage their attention, with the view of preparing materials for an appeal to the legislature and of evidence to support it,—they feel that two other objects have peculiarly strong claims on the attention of the profession and the public. These are the *education* of persons intending to become solicitors and the *superintendence* of the profession. The Committee conceive that an improved system of professional education forms the true basis for the honour and usefulness of the profession, and the maintenance of an effective supervision over it affords to the public the best security against the abuse of professional power and privileges.

But as both these objects have received and continue to engage the careful attention of *The Incorporated Law Society* (a body entrusted both with the examination and registration of attorneys and solicitors, and being armed with chartered rights and powerful influence, possess the best means of effectually promoting them,) the Committee of Management conceive that this Association will contribute more to advance these great objects, by a *steady and cordial support of the exertions of the Incorporated Law Society*, and by suggesting improvements to them from time to time, than by any separate course of action at present with regard to them.

The Committee deem it no more than an act of justice to express their sense of the invaluable services which have been rendered both by the Council of the Incorporated Law Society, and a large number of its members, in the establishment of this Association. It has been through the friendly aid and sanction of the Incorporated Society collectively, and of many of its members individually, that the Association has been enabled to surmount some of the chief difficulties which always attend the organization of an extensive body, and to establish itself on a permanent footing.

To the same liberal spirit the Committee of Management are indebted for the invaluable aid which, up to this period of their labours, the Incorporated Law Society has allowed them to receive from their able and indefatigable Honorary Secretary, Mr. Maugham. In reliance on this spirit, the Committee of Management, in the early part of the year, ventured to request the Council of the Incorporated Law Society to allow the continuance, for some further time, of Mr. Maugham's services, and the Council kindly consented to those services being extended up to the present Annual Meeting of the Association.

The extent of labour, however, required from

the Secretary of this Association, which has already been very considerable, and is rapidly increasing, renders it impossible for the same gentleman to undertake the secretaryship of both institutions; and amongst the duties which will require attention at an early period after the present Annual Meeting, will be the very important one of selecting a Secretary of this Association, whose station will be in the Metropolis, and on whose talents, energy, and judgment the future success of the Association will in no small degree depend.

The result of the exertions which have hitherto been made, has been, that of the London Solicitors 308 have joined the Association, and of the country 605, making in all 913.

From the Report of the Sub-Committee for the counties forming the Northern Circuit, the Committee of Management have the satisfaction of ascertaining that the profession in that large district is fully sensible of the necessity for vigorous measures to maintain their position and uphold the privileges which justly appertain to their body. In addition to the large number already enrolled as members, about forty actual pledges have been further given to join the Association. The Sub-Committee consider that there is every prospect of a considerable further increase of members, so soon as the Report of the past year's proceedings shall be circulated; and they look forward with confidence to the success of their endeavours to procure the names of the most respectable and influential men within the Circuit as members of the Association.

| | £ | s. | d. |
|--|-----|----|----|
| The donations which have been received amount to | 753 | 2 | 0 |
| The annual subscriptions to | 565 | 16 | 0 |
| The interest on Exchequer Bills | 8 | 3 | 0 |

| | | | |
|-------------------------|--------|---|---|
| Making in all | £1,327 | 1 | 0 |
|-------------------------|--------|---|---|

| | | | |
|---|-----|---|---|
| The disbursements to the printer, law-stationer, and for postages and other expenses (the particulars of which are stated in the treasurer's account) amount to | 358 | 0 | 8 |
|---|-----|---|---|

| | | | |
|--------------------------------|------|---|---|
| Leaving a balance of | £969 | 0 | 4 |
|--------------------------------|------|---|---|

Out of which the sum of 617*l.* 13*s.* 4*d.* has been invested in Exchequer Bills, and the balance in cash at the bankers is 351*l.* 7*s.*

19th April, 1848.

MOOT POINTS.

LEASEHOLDS.—MORTGAGE.

A. is possessed of several leasehold houses, one of which he demises to *B.* Subsequently *A.* assigns the premises to *C.* by way of mortgage, and deposits the lease to *B.* with the mortgage deed.

A. then, by deed, without the concurrence of the mortgagee, releases *B.* from the rent and covenants in the lease, in consideration of the fixtures, and verbally agrees to accept a lower

rent, which B. pays for several years under the new tenancy, the counterpart of B.'s lease still remaining with the mortgagee.

Has the mortgagee any and what remedy against the original lessee?

L.

CONVEYANCE WITHOUT CONSIDERATION.

A fine is sometimes said to be a feoffment of record, and it is a settled rule and maxim, that nothing shall be averred against a record, nor shall any plea or even proof be admitted to the contrary: no consideration being necessary to support a contract under seal, and records being even of a higher degree than deeds, I conceive that the fine referred to by "Civis" (p. 309) cannot be questioned, much less set aside, by any authority less than parliament.

T. W. H.

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act.

Chandler, Benjamin, jun., Sherborne, in and for the counties of Dorset and Somerset.

Waterworth, Thomas, Keighley, in and for the West Riding of the county of York.

Young, John, 6, Sise Lane, Bucklersbury,

in and for London, Middlesex, Essex, Surrey, and Kent.

MASTERS EXTRAORDINARY IN CHANCERY.

From July 25th, to Aug. 18th, 1848, both inclusive, with dates when gazetted.

Louch, John, Langport. Aug. 1.

Rutter, John Farley, Shaftesbury. July 25.

Savery, Foscett, Bristol. Aug. 15.

Seymour, Hugh Callau, Bath. Aug. 4.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From July 25th, to Aug. 18th, 1848, both inclusive, with dates when gazetted.

Everest, William, George White, Charles Hanslip, and William Thomas Manning, 12, Hatton Garden and Epsom, Attorneys, Solicitors, and Parliamentary Agents, so far as regards Charles Hanslip and William Thomas Manning. July 28.

Horwood, Thomas, and William Henry Griffin, 27, Austin Friars, Attorneys and Solicitors. July 25.

Peters, George Frederick, and Henry Abbot, Bristol, Attorneys and Solicitors. Aug. 8.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Lucas v. Laurence. May 4, 1848.

CLERICAL ERROR.—WRIT DE CONTUMACI CAPIENDO.

The Court will not, upon the application of the party issuing a writ de contumaci capiendo, order, after the writ has been returned to the Petty Bag, that the registrar be at liberty to amend a clerical error in the significavit indorsed by him on the writ. Whether it will make such an order on the application of the registrar, quære?

Mr. *Baily* moved that the registrar might be at liberty to amend the *significavit* indorsed by him on a writ *de contumaci capiendo*, issued in respect of certain proceedings in the Ecclesiastical Court, by correcting the name of a party mentioned in the *significavit*. The Registrar had returned the writ to the Petty Bag Office; and it was stated that the party who had issued the writ could not obtain a second writ.

Lord, *Langdale* said, that he did not see how he could help the applicant. The instrument had been returned to his custody under the authority of an act of parliament. If any order could be made he thought it must be on the application of the registrar.

Vice-Chancellor of England.

Ex parte the Earl of Hardwicke. June 10 1848.

CONSTRUCTION OF RAILWAY ACT, 7 & 8 VICT. C. 62.—MORTGAGE.—COSTS.

On the construction of the Eastern Counties' Railway Act, held, that the company were not obliged to pay the costs of discharging an incumbrance upon lands which they had purchased, such incumbrance being paid off with the purchase-money in Court.

THE Eastern Counties' Railway Company purchased some land from the Earl of Hardwicke, who was tenant for life. The money had been paid into Court and invested. The lands so purchased, together with other lands in settlement, were subject to a mortgage for 5,000L., effected many years ago. A petition was presented by the Earl to have the money in Court applied in discharge of such mortgage. The petition was of great length, the abstracts necessary for the deduction of title to the mortgage being set out in the petition to avoid the expense of a reference.

Mr. *Heathfield*, for the company, objected to pay the costs of deducing the title and all costs attending the discharge of the mortgage.

Mr. *Bagshawe*, contra, contended that the company ought to pay the costs, and he relied on the words of the Eastern Counties' Railway Act, 7 & 8 Vict. c. 62, which were the same as

those used in the Lands' Clauses Consolidation Act.

The act 7 & 8 Vict. c. 62, says, that "the costs of the following matters, including therein all reasonable charges and expenses incident thereto, shall be paid by the company; that is to say, the costs of the purchase, or of the taking or using of the lands, or which should have been incurred in consequence thereof, other than such costs as are therein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof or of the government or real securities purchased therewith, in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the order for the payment of the dividends and interest of the government or real securities upon which such money should be invested, and for the payment out of Court of the principal of such monies, or of the government or real securities wherein the same should be invested, and of all other proceedings relating thereto, except such as were occasioned by litigation between the parties."

The Vice-Chancellor said the fact of the devolution of title swelling out the petition was purely accidental, but he did not see any words which directed the costs of the conveyance to be paid by the company, and that he should only give the costs according to the act. The company, therefore, would pay the costs of the application and of getting the money out of Court, but not the costs of paying off the incumbrance.

Vice-Chancellor Knight Bruce.

Phelps v. Prothero. May 26, 1848.

PRODUCTION OF DOCUMENTS.—PROPER CUSTODY.—SUBPENA DUCES TECUM.—PUBLIC OFFICERS OF A BANK.

THIS was a motion on behalf of the plaintiffs in the suit, that John Fraser, the registered public officer of the Monmouthshire and Glamorganshire Banks, might be ordered to produce the ledgers and cash books of the banking company for the year 1844, and all letters which passed between him and Mr. Cartwright in reference to the purchase by the banks of certain colliery property, and also the contract for sale entered into between Mr. Fraser and Mr. Cartwright.

Mr. Roxburgh, in support of the motion, stated that Mr. Fraser had been served with a subpoena *duces tecum* to produce these documents before the Master, but, although he admitted they were in his possession, he refused to produce them, on the ground that they were the evidences of the title of the bank. An affidavit had since been filed by Mr. Fraser and one of the trustees of the bank, alleging to the effect, that the books and other documents in question were not under the exclusive or proper control of Mr. Fraser, and that, although

he had inadvertently brought them to London on the occasion of his examination before the Master, he had done so without advice, and had since restored them to their proper custody at the banking-house at Newport. It was contended, therefore, that, under these circumstances, it was quite immaterial in whom the legal custody of the documents might be, if the witness had the capacity to produce them, and he was bound under the subpoena so to do; and that as Mr. Fraser, by his own affidavit, admitted he had brought them to London, it was his bounden duty, in obedience to the subpoena *duces tecum*, to do that which he said he had the means of doing. *Arney v. Long*, 1 Camp. 17; *Lee v. Burrell*, 3 Camp. 337; *Doe v. Thomes*, 3 Barn. & Cres. 293; *Rees v. Woody*, 1 M. & R. 390; *Reg. v. Lord John Russell*, 7 Dowl. P. C. 696; *Reg. v. Greenaway*, 2 New Sess. Cas. 103; and *Hall v. Connell*, 3 Yo. & Coll. 707.

Mr. Greene opposed the motion, contending that in all the cases cited the custody of the documents had been the proper custody; but in this case it was only by accident that Mr. Fraser had the possession of the documents now in question. It could never be held that a person who had a subpoena *duces tecum* served upon him was bound to produce the title deeds which by accident might happen to be in his possession. The subpoena in this case was too wide in its terms to enable the Court to make the order as asked. *Attorney-General v. Wilson*, 9 Sim. 526.

Mr. Roxburgh, in reply, insisted that the question was not who had the legal custody of the documents required, but whether the individual who was served with the subpoena *duces tecum* had the capacity to produce them. If he had, he was bound to bring them into Court, and the Court itself would exercise its own discretion whether they were such instruments as ought to be read, when produced in evidence. When he was before the Master, Mr. Fraser had the power of producing the documents, and ought to have done so, but he refused. The order now asked was strictly in accordance with the practice of the Court. *Bradshaw v. Bradshaw*, 1 Russ. & Myl. 358.

His Honour. "Without deciding the question whether this witness, as the public officer of a bank, was bound under a subpoena *duces tecum* to produce the documents of the bank, I think that the contract is a title deed which is protected under the ordinary rule. With respect to the other documents, I have not been satisfied that, if produced, they could have been made evidence against the defendant, and, therefore, exercising the discretion which the Court is bound to do in applications of this description, I consider, on this latter ground, the Court ought not to interfere. If I did not feel myself restrained by the rules of the Court and by its practice, I should order the production, but I feel I cannot do so. I refuse the motion, but without costs."

Court of Exchequer.

Richards v. James. June 5, 1848.

PLEADING. — SET-OFF AFTER ACTION BROUGHT.

A debt falling due from the plaintiff to the defendant, after action commenced, cannot be pleaded by way of set-off to the further maintenance of the suit.

DEBT on an indenture. Plea to the further maintenance of the action, except as to the costs incurred to the time of plea pleaded, a set-off accrued since action commenced. Demurrer.

Butt, in support of demurrer. The defendant is entitled to plead a set-off only by virtue of the statute 2 G. 2, c. 22: he has no such right at common law, and it had never been suggested that such a plea could be allowed. The 13th section provides, that where there are mutual debts between the plaintiff and the defendant, one debt may be set against the other, and given in evidence under the general issue, or pleaded in bar, as the nature of the case shall require; that is, mutual debts existing at the time of action brought, and pleaded in bar of the whole action, and not a part only. [*Platt*, B. A set-off certainly might be pleaded in bar to a part of the action in the same way as a release.] You never can give in evidence matter arising subsequently, which shows the construction to be put upon the words "pleading in bar." [*Parke*, B. Unless they can show how they can plead this after the last continuance, I do not see how they can succeed.] In *Evans v. Prosser*, 3 T. R. 186, the opinion of the Court is express, that no plea of set-off can be pleaded when the right did not exist when the action commenced. *Le Bret v. Papillon*, 4 East, 502; *Braithwaite v. Coleman*, 4 N. & M. 654; *Rogerson v. Ladbroke*, 1 Bing. 93; *Drayton v. Dale*, 2 B. & C. 293; *Eland v. Karr*, 1 East, 375.

Hipson, in support of the plea. He admitted the whole question arose upon the words of the statute, and that there was no precedent in favour of the plea, but the statute was a remedial and beneficial law, and according to the general practice ought to be construed liberally. In this case 500*l.* becomes due from the defendant to the plaintiff, who immediately commences his action, and before the defendant is called upon to plead the same sum of money falls due from the plaintiff to the defendant. Every principle of justice was in favour of the plea, and by allowing it in this

case the very mischief would be met which the statute intended to prevent. The words of the statute certainly would not prohibit the Court from putting that construction upon them which was favourable to the defendant. The words of the statute are "mutual debts;" here there were mutual debts: the statute does not say at the time of action brought, and why should such words be introduced? By "pleaded in bar" is meant in bar of the recovery, and not of the whole action from the time of the commencement. In *Le Bret v. Papillon*, the plea was, that the plaintiff was an alien enemy; replication, that plaintiff was at the time of the commencement of the suit alien enemy; to which defendant demurred, and Lord Ellenborough, in giving the judgment of the Court, said, "The question is, whether the plea of the defendant pleaded, as it is generally, in bar of the action, be good; or whether, inasmuch as a right to sue was well vested in the plaintiff at the time of action brought, it ought not to have been pleaded in the form in which pleas after the last continuance are generally pleaded in that the plaintiff ought not further to have or maintain his action? And, indeed, according to what is said in *Lutw.* 1143, *Campion v. Barker*, "this seems to be the proper way of pleading a collateral thing which happens after the action brought, for by this it admits that the action was well brought, but that the plaintiff, by reason of new matter, ought not to proceed further in it." And in *Sullivan v. Montague*, *Doug.* 112, it was held, that matter of defence arising after action brought, might be given in evidence under the general issue, if it happened before plea pleaded. Again, the words of the statute were not simply "pleaded in bar," but "pleaded in bar as the nature of the case shall require." He then referred to the stat 1 G. 2, c. 24, s. 5, extending the operation of the stat. 2 G. 2, c. 22.

Pollock, C. B. This is a novelty, supported by no precedent. The statute will not warrant the setting-off a matter which has arisen since the commencement of the action.

Alderson, B. I am of the same opinion; the case must have occurred a thousand times since the passing of the statute.

Rolfe, B., concurred, and referred to the judgment of the Court, delivered by Lord Mansfield, in *Baskerville v. Brown*, 2 Burr. 1229, to show that under the old law such matter could not have been given in evidence under the general issue without notice.

Platt, B., concurred.

Judgment for the plaintiff.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

CONSTRUCTION OF STATUTES.

[Concluded from p. 336.]

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Courts of Equity.

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Courts of Common Law:

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Construction of Statutes, p. 332.]

INSOLVENT ACT.

1. 1 & 2 Vict. c. 110.—A discharge under the Insolvent Debtors' Act cannot be given in evidence under a replication of *nil debet* to a plea of set-off, but must be specially replied: *Semble*, per *Patteson, J.*, that statute 1 & 2 Vict. c. 110, s. 91, enabling persons sued for any debt with respect to which they are entitled to the benefit of the act to plead generally, that they were duly discharged according to the act, by the order of adjudication, "and that such order remains in force, without pleading any other specially," extends to the replication to a plea, setting-off any such debt. *Ford v. Dornford*, 8 Q. B. 583.

Cases cited in the judgment: *Chapple v. Durs-ton*, 1 C. & J. 1; *Bircham v. Creighton*, 10 Bing. 11.

2. *Protecting order*.—5 & 6 Vict. c. 116, s. 10.—To an action of debt upon simple contract, defendant pleaded in bar, under stat. 5 & 6 Vict. c. 116, s. 10, an order for protection. The plea stated only that the action was for a debt contracted before the date of filing defendant's petition for protection from process, as after-mentioned; that, before the commencement of the suit, he, under and by virtue of and according to the directions of the statute, presented his petition for protection from process to the Birmingham District Court of Bankruptcy; that such petition was duly presented; and that afterwards, and before the commencement, &c., a final order for protection and distribution was made by a commissioner duly authorized.

Held, on special demurrer, that the plea did not show enough to bring it within the requisites of the statute. *Tyler v. Shinton*, 8 Q. B. 61.

Case cited in the judgment: *Cook v. Henson*, 1 C. B. 908.

3. 5 & 6 Vict. c. 116.—A plea of the defendant's discharge, under the 5 & 6 Vict. c. 116, should either set out the proceedings in conformity with section 4, or describe them as in section 10 of that statute. *Wright v. Hutchinson*, 5 D. & L. 149.

4. In June, 1844, the defendant was taken in execution on a *ca. sa.* upon which he petitioned the Bankruptcy Court under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, he obtained his interim order, and got out of custody.

When he came up for his final order he applied to have his petition dismissed on the ground that he had entered into an arrangement with the plaintiff and the rest of his creditors to pay them certain money by instalments towards the liquidation of their claims. The commissioner, however, thought that one of the debts was contracted in fraud, and therefore did not dismiss the petition, but acted under the 24th section of 7 & 8 Vict. c. 96, and refused to name any day for granting the final order. The defendant continued at liberty until August, 1847, when the plaintiff issued a fresh writ of *ca. sa.* upon the old judgment, and took the defendant in execution.

Held, on a motion to set aside the execution on the ground of irregularity, and discharge the defendant out of custody, that the execution was regular, and that the defendant could well be retaken on the new writ.

Semble, that this would have been otherwise if the petition had been dismissed under the agreement. *Parker v. Baily*, 35 L. O. 101.

5. *Insolvent*.—*Vesting order*.—A plea under the 5 & 6 Vict. c. 116, s. 4, setting out all the particulars antecedent to the grant of a final order, and the granting thereof for the protection of the person of the insolvent, and the vesting of his estate in the official assignee, was held good, though it did not mention nor refer to the creditors' assignees. *Lewis v. Harris*, 35 L. O. 438.

INTERPLEADER ACT.

Judge at Chambers.—*Payment of money out of Court*.—Where a judge at chambers, by an interpleader order, has directed money to be paid into Court to abide the event of an issue, and has reserved the question of costs, an application for payment of the money out of Court must be made to the same judge, and not to the Court. *Marks v. Ridgway*, 1 Exch. R. 8.

LAND TAX REDEMPTION ACT.

42 G. 3, c. 116.—*Grant of copyholds*.—The rector and lord of the manor of B., by one grant, demised for three lives, at one aggregate holding, and at one undivided rent, 3 ancient tenements originally held of the manor under distinct grants and at distinct rents. The same rector afterwards disposed of the reversion in fee under the provisions of the Land Tax Redemption Act, 42 G. 3, c. 116: *Held*, that, though the grant for lives might be void unless sanctioned by a special custom in the manor, yet the purchaser of the reversion had a good title, the sale being approved of by the Land Tax Commissioners. *Doe d. Strickland v. Woodward*, 1 Exch. R. 273.

LIMITATIONS, STATUTE OF.

1. *Part payment*.—Part payment of a debt will not take the case out of the Statute of Limitations, unless the payment be made under circumstances which warrant a jury in inferring a promise to pay the residue; therefore, where a party, on being applied to for interest, paid a sovereign, and said he owed the money, but

would not pay it: *Held*, that it was a question for the jury to say whether he intended to refuse payment, or merely spoke in jest. *Wainman v. Kynman*, 1 Exch. R. 118.

2. Replevin for distraining a cart on 13th May, 1845. Avowry, (under 11 G. 2, c. 19, s. 22,) that the *locus in quo* was parcel of a tenement called *H.*, holden of the manor of *S. M.*, by fealty and rent of 9s. yearly, to be paid at old Michaelmas in every year, of which manor defendant, at the time when, &c., was the owner, and that, because defendant occupied the *locus in quo* at the time when, &c., and because 2l. 14s. of the rent aforesaid for six years, ending at Old Michaelmas, 1844, was in arrear, defendant well avows the taking the said cart, &c. Pleas in bar:—1st, that the *locus in quo* was not parcel of the manor of *S. N.*; 2nd, that it was not holden of that manor; 3rd, that defendant was not owner and possessed of that manor; 4th, that no rent was in arrear. *H.* farm was holden of the manor of *S. M.*, at an ancient freehold rent of 9s. per annum, payable at Michaelmas yearly. All arrears to Michaelmas, 1824, were paid in January, 1825. No other payment took place, but, after repeated applications for the rent in several years before Michaelmas, 1844, the lord distrained in May 1845, for six years' rent, due at Michaelmas, 1844: *Held*, 1st, that, by the operation of 2 & 3 W. 4, c. 27, ss. 2, 3, 34, the rent was extinguished by the lapse of 20 years from the day on which the last payment was made; and 2nd, that the bar thus interposed by the Statute of Limitations need not be specially pleaded, and might be given in evidence on the plea in bar of *non tenuit*.

In replevin, the judge's opinion at the trial was in favour of the defendant, so that he had no occasion to tender a bill of exceptions; but leave was given to move to enter a verdict for the plaintiff. The Court afterwards entered a verdict for the plaintiff. The effect was to extinguish the rent, the subject-matter of the avowry, without leaving any means of reviewing the judgment. The Court inclined to grant a new trial, but recommended a special verdict, in order to carry the case at once into a Court of Error, which was afterwards consented to on terms. *Owen v. De Beauvoir*, 16 M. & W. 547.

3. *Merger*.—*Satisfied Terms' Act*.—In 1784, premises were leased to *H. J.* for three lives. *H. J.*, by his will, devised all his estate and interest in the premises to his wife, *A. J.*, her heirs and assigns. *A. J.*, in 1793, conveyed the estate so devised to her, to her son *R. J.*, and the heirs of his body, with a proviso that if he should have no child living at his death, the limitation thereby made should cease, and the estate should revert to *A. J.*, her heirs and assigns. In 1811, *R. J.* purchased the reversion in fee in the premises, expectant on the lease for lives, which was duly conveyed to him; and at the same time an old satisfied term of 5,000 years, affecting the premises, was assigned to a trustee for him, to attend the inheritance. *R. J.* died in 1812, without issue,

leaving his nephew, *L. J.*, his heir-at-law, and the heir-at-law of *A. J.* The lease for lives determined in 1835. For upwards of 20 years from the death of *R. J.* the premises were held adversely to *L. J.*: *Held*, that his right of entry was barred thereby, and that he had not a new right of entry on the determination of the lease for lives in 1835.

Held, also, that since the stat. 8 & 9 Vict. c. 112, the outstanding term would have been no defence to an ejectment by *L. J.*, or any person claiming under him. *Doe d. Hall v. Mouldsdate*, 16 M. & W. 689.

4. 3 & 4 W. 4, c. 27, s. 3.—That branch of the 3rd section of the Limitation Act, 3 & 4 W. 4, c. 27, which relates to estates in reversion, expectant on the determination of a particular estate, applies only to cases where another person than the reversioner is entitled to the particular estate. *Doe d. Hall v. Mouldsdate*, 16 M. & W. 689.

LITERARY SOCIETY.

1. *Exemption from rates*.—6 & 7 Vict. c. 36.—Stat. 6 & 7 Vict. c. 36, s. 1, exempts from parochial and other rates all land, houses, &c. "belonging to any society instituted for purposes of science, literature or the fine arts, exclusively, either as tenant or owner, and occupied by it for the transaction of its business," "provided that such society shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend," &c., "in money into or between any of its members."

Held, that to come within this exemption, a society must have an express law prohibiting any such dividend, &c.

Seemle, that a society, instituted for the diffusion of religious principles and sentiments, though by literary means, (such as The Religious Tract Society), is not within the exemption. *Reg. v. Jones*, 8 Q. B. 719.

2. *Time for appealing against barrister's certificate*.—By the rules of a society, it was provided, that this institution should be designated The Institution for Promoting the Education of the Labouring and Manufacturing Classes of Society of every Religious Persuasion; and for the purpose of making manifest the extent of its objects, the title of the Society should be The British and Foreign School Society; that a school should be maintained to educate children for the purpose of supporting and training up teachers; and it was stated, that the grand object of the institution was to promote education in general. In the normal school for training teachers, lectures were given on specified branches of literature, science, and the fine arts; also lectures on the art of teaching, and Bible lessons. Instruction was also given in needlework. There were model schools for boys and girls, "for the purpose of elucidating the art of teaching;" and it was stated, that "the number of children in them is large, in order to afford a sufficient scope and opportunity for the pupil teachers to instruct and put in practice the science of teaching; the object

of the institution being to train up teachers who may promote education according to the particular system of this institution, both in the United Kingdom and in the Colonies."

Held, that the society was not "instituted for purposes of science, literature, or the fine arts exclusively," within the meaning of stat. 6 & 7 Vict. c. 36, s. 1; and therefore, that the lands, &c. belonging to it were not exempted by that statute from rates.

The society obtained the barrister's certificate under the act, which was filed; after which an assessment of rates was made under a local act (10 G. 4, c. cxxviii); afterwards notice of the filing was given to the collector of rates, and to the trustees under that act, after which another assessment was made.

Held, that an appeal made within four calendar months next after the assessment mentioned, though not within four calendar months next after the assessment first mentioned, was in time, within stat. 6 & 7 Vict. c. 36, s. 6, as being made "within four calendar months next after the said assessment," "after such exemption shall have been claimed by such society." *Reg. v. Pocock*, 8 Q. B. 729.

3. *Effect of barrister's certificate*.—The certificate of the barrister, under 6 & 7 Vict. c. 36, (exempting scientific and literary societies from rates,) that a society is entitled to the benefit of the act, does not furnish conclusive proof that the society is so entitled. *Reg. v. Phillips*, 8 Q. B. 745.

LOCAL ACT.

Trespass for breaking and entering plaintiff's mill, and taking his goods. Plea, under 1 Vict. c. lxxix. (local), that defendants, as commissioners under the act, completed one of three reservoirs mentioned therein; that plaintiff's mill was benefited by the supply of water therefrom; that a certain rate was made, and that the trespass was committed, and the goods taken as a distress for non-payment of the rate. Replication, that only one reservoir had been completed. The act was for making, and maintaining reservoirs upon the tributary streams of the river Etheron, otherwise the Mersey, in the parish of Glossop, in the county of Derby, for more effectually and regularly supplying with water the mills, manufactories, and works on the said tributary streams and rivers. The preamble of the act recites, that certain manufacturing trades were extensively carried on along the tributary streams of the river Etheron, otherwise the Mersey, and along the said river, and that great inconvenience was felt by persons engaged in those trades from the supply of water being inadequate to propel the machinery of their mills, &c., situated thereon; and that such inconvenience would be greatly removed by the construction of proper reservoirs for creating a regular supply; and that there were three eligible situations for such reservoirs in three narrow valleys in the township of Glossop, Whitfield, Simmondley, and Charnal, in the parish of Glossop, through which the said tributary streams, called, &c.,

run, by which the mills, &c. might be regularly supplied with water; and that it would be of great advantage to the occupiers of the mills &c., and of the lands adjoining and to the public, if the object were accomplished. The style of the corporation to be "The Commissioners of the Glossop Reservoirs." By s. 18, the persons qualified to vote at meetings are the occupiers rated, or who would be qualified to be rated, if the reservoirs to be made were then actually made and in use. By s. 33, the commissioners are empowered to levy rates yearly, or half-yearly, upon all persons who shall occupy any part of the said tributary streams or river Etheron, and the falls, within certain limits, in certain proportions. By s. 34, separate rates are to be levied for each reservoir, and separate accounts kept. By s. 39, the commissioners are to appoint persons to survey and ascertain the height of falls, and degree of benefit derived by the said mills, &c. Sec. 38 enacts, that "no rate shall be levied or assessed under the provisions hereinbefore contained, until the said reservoirs shall be actually made and in use, and water supplied therefrom: *Held*, that the completion of one reservoir entitled the commissioners to levy a rate on the persons actually benefited by it; and therefore that the plea was good. *Sidebottom v. The Commissioners of the Glossop Reservoirs*, 1 Exch. R. 177.

MORTMAIN ACTS.

A testator devised houses to trustees upon trust for sale, and to apply the proceeds to pay legacies of 50*l.* to each of three charitable and religious institutions. He also gave legacies to other persons, and made his brother residuary legatee: *Held*, that the trust estate was not avoided by the Statute of Mortmain, 9 G. 2, c. 36, though the houses went to the heir-at-law, and not to the charitable uses. *Doe d. Chidgey v. Harris*, 16 M. & W. 517.

NATIONAL DEFENCE ACT.

5 & 6 Vict. c. 94.—*Compensation*.—*Expenses of trial*.—A person, whose land has been valued by a jury, and sold, under the provisions of the National Defence Act, (5 & 6 Vict. c. 94,) is not entitled to the expenses of costs which he has necessarily incurred in bringing the matter to trial. The words of the 19th section, "*compensation for the absolute purchase of the land*," are not *per se* sufficiently comprehensive to include such expenses and costs. *Laws, in re*, 1 Exch. R. 441.

PATENTS ACT.

Held, on error in the Exchequer Chamber, affirming the judgment of the Court of Exchequer:—

1. That under the stat. 5 & 6 W. 4, c. 83, s. 4, an extension of a patent may be granted by the Crown to an assignee of the patent, as well as to the original patentee.

2. That the Crown may, under s. 2, grant new letters patent after the expiration of the term of the original letters patent, if the petition

for the same was presented before the expiration of that term: *Ledsam v. Russell*, 16 M. & W. 633.

Case cited in the judgment: *Spilsbury v. Clough*, 2 Q. B. 466.

PRIVATE ACTS.

11 G. 3, c. 15; 57 G. 3, c. 29. — *Rate.* — *Meaning of words "within the street."* — By stat. 11 G. 3, c. 15, "for better paving High Street, Whitechapel, and removing obstructions and annoyances therein;" commissioners appointed under that act were empowered, for defraying the charges and expenses attending the execution of the act, to rate all and every person and persons who do or shall inhabit, hold, occupy, possess, or enjoy any house, shop, warehouse, cellar, vault, or other tenement "within the said street."

The Metropolis Paving Act, 57 G. 3, c. xxix., s. 24, enacts, that rates for paving or repairing the pavements of the said streets or public places in any parochial or other district, by virtue of any local act, or of the said act, shall be laid "upon all persons who shall inhabit, hold, occupy, be in possession of, or enjoy any messuages, tenements, lands, grounds, coach-houses, stables, cellars, vaults, houses, shops, warehouses, or other buildings or hereditaments, situate or being within any of the streets or places within the said parochial or other district."

To the north of High Street, Whitechapel, and communicating with the street by means of a covered gateway, there is a yard called the "Kent and Essex Yard," around which are several dwelling-houses, warehouses, stables, sheds, a booking-office, and other buildings. The yard, (with the exception of the width of the gateway,) and all the dwelling-houses, &c., round the same, are situate at the back of several houses and premises which front High Street. The entrance into the yard is through carriage gates, and along a covered gateway. No part of the yard was ever paved or repaired by the commissioners, nor had they, within the yard, at any time exercised any of the powers conferred on them by the above acts.

Held, that the occupiers of the yards and houses therein were liable to be rated in respect of the paving and repairing of High Street, the premises being, for that purpose, "within the street," inasmuch as they had a frontage on the street, and their sole communication was with the street. *Baddeley v. Gingell*, 1 Exch. R. 319.

SALE OF PUBLIC OFFICE.

Illegal contract, under 5 & 6 Edward 6, c. 16. — *Agreement void in part, void for the whole.*

— Where the agreement disclosed in the declaration was for the sale to the defendant of the business of a law-stationer, for the sum of 300*l.*, and further, that the plaintiff should cease to carry on such business, or collect any of the assessed taxes in right of the office of collector of assessed taxes and sub-distributor of stamps, which, as recited in the declaration, the plaintiff

then carried on, and would use his best endeavours to introduce the defendant to the said business and offices: *Held*, that under the provisions of the 5 & 6 Edw. 6, c. 16, the agreement was void, being entire, and for the sale of an office relating to the receipt of the revenue. *Hopkins v. Prescott*, 34 L. O. 329.

SHERIFF.

Extortion. — That stat. 29 Eliz. c. 4, (against extortion by sheriffs, &c.), is not repealed by the 1 Vict. c. 55; but the only effect of the latter stat. is to exempt from the penalties of the stat. of Eliz. the cases in which the sheriff shall take no larger fees than shall be allowed by order of the judges. Therefore, in a declaration on the case for extortion, on the stat. of Eliz., it is not necessary to negative the defendant's having had authority under the stat. of Vict., to take the fees complained of; but that is matter of defence, which should come by way of plea.

The Court would not take judicial notice that an order of the judges, allowing a scale of fees under the stat. 1 Vict. c. 55, was made before the time of the alleged extortion stated in the declaration.

The declaration stated, that the defendant levied, out of the goods of the plaintiff's debtor, a certain sum, to wit, 28*l.* 10*s.*; and that he wrongfully took from the plaintiff, for serving and entering the execution, a large sum, to wit, 16*l.*, the same being a larger sum, &c., than by the stat. limited, and of and for the sum so levied, that is to say, a large sum, to wit, the sum of 15*l.*, more than in the said act limited in that behalf. *Semble*, that this allegation of the extortion was bad in point of form; for that the poundage allowed upon this levy by the stat. being 1*l.* 8*s.*, the statement that the defendant took 16*l.*, and that that sum was excessive by 15*l.*, was repugnant, and if the words, "to wit, the sum of 15*l.*," were rejected as surplusage, there was no sufficient allegation of the damage. *Pilkington v. Cooke*, 16 M. & W. 615.

Case cited in the judgment: *Davies v. Griffith*, 4 M. & W. 377.

STAMP ACT.

1. *Cheque.* — *Date and place.* — A cheque is sufficiently dated to satisfy the exemption clause, sect. 15, of the Stamp Act, 9 G. 4, c. 49, if it bear date, "Dorchester Old Bank," and there be in fact a bank so called in the town of Dorchester, and there be no proof that the cheque was drawn elsewhere than at Dorchester. *Strickland v. Mansfield*, 8 Q. B. 675.

2. *Payment of bill of exchange.* — Payment within the 55 G. 3, c. 184, s. 19, of a bill of exchange, so as to render it no longer negotiable, must be a payment by the party ultimately liable. Therefore, where a bill of exchange, indorsed in blank by the drawer, was overdue and unpaid; and an action had been commenced by C., the holder, against the acceptor, and the plaintiff, who was a stranger to the bill, paid the amount of the bill and costs to C., who delivered the bill to him:

Held, that the plaintiff might maintain an action on the bill against the drawer; and that the bill did not require a fresh stamp, as being re-issued after payment. *Thomas v. Fenton*, 5 D. & L. 28.

3. *Receipt.—Promissory note.—Agreement of value of 20l.*—In an action for money lent, &c., the following document was tendered in evidence:—"Berwick, 16th March, 1841. 170l. Received from Mrs. B. Taylor, the sum of 170l. for value received, for which I promise to pay her at the rate of 5 per cent. from the above date. A. N. Steele:" **Held**, not to require a stamp, either as a receipt, a promissory note, or an agreement of the value of 20l. *Taylor v. Steele*, 16 M. & W. 665.

Case cited in the judgment: *Melanotte v. Teasdale*, 13 M. & W. 216.

TOLERATION ACT.

1 *W. and M.* 18.—*Exemption from penalties for nonconformity.*—Liability of priest for breach of ecclesiastical discipline, though professing to have become a dissenter.

The 4th section of the Toleration Act, 1 stat. 1 *W. & M.* c. 18, exempting persons who shall take oaths and subscribe the declaration there mentioned from prosecution in the Ecclesiastical Court for nonconformity to the Church of England, extends not only to persons but to clergymen who, after being ordained, dissent from the church. *Semble*, that to claim this exemption, it is sufficient that the party states himself to be a dissenter, without any more formal act.

But a person ordained a priest in the Church of England cannot, in this manner or otherwise at his own pleasure, divest himself of his orders, so as to exempt himself from correction by the bishop for breach of ecclesiastical discipline. Performance, by such priest, of the church service in an unconsecrated chapel, not licensed by the bishop, and against his instruction, is such a breach of discipline, and not a mere act of nonconformity protected by the Toleration Act, or by stat. 52 *G.* 3, c. 155.

So held on motion for a prohibition, where articles had been exhibited in the Ecclesiastical Court, under stat. 3 & 4 *Vict.* c. 86, against a priest for such irregular performance of service, and he put in defensive allegations, stating that, before he did the acts complained of, he had seceded from the Church of England, and was minister of a congregation of protestant dissenters, assembling in an unlicensed chapel. Prohibition refused. *Barnes v. Shore*, 8 *Q. B.* 640.

Cases cited in the judgment: *Trebec v. Keith*, 2 *Atk.* 498; *Carr v. Marsh*, 2 *Phill. Ecc. R.* 198.

TRUCK ACT.

1 & 2 *W.* 4, c. 37.—*Payment of wages otherwise than in current coin.*—Plaintiff, a framework knitter, worked as a weaver of gloves for defendant, in frames provided by defendant, at an agreed gross price per dozen pairs. Defendant was a sub-contractor, furnishing the

work, by agreement, to a master manufacturer, who found machinery and materials. Defendant settled with plaintiff weekly for the work done, deducting out of the gross price per dozen certain charges, which were according to the known custom of the trade, viz.:—1. A frame-rent per week. 2. A payment per week for use of defendant's premises to work in, standing room for the frame, defendant's trouble and loss of time in procuring materials and conveying them to plaintiff, defendant's responsibility to the master manufacturer under whom he contracted for the work, superintendence of the work, sorting the goods when made, and delivering them to the master manufacturer. 3. Payment to a boy for winding the yarn; and wear and tear of machinery. 4. A penny per shilling on the net sum earned by plaintiff above 14s. per week, as compensation to defendant for a per centage paid by him to the master manufacturer on the amount of goods manufactured by defendant for him, with machinery rented of him by defendant. There was no written contract between plaintiff and defendant: **Held**, that the agreement to pay plaintiff's wages was not a contract to pay part of such wages otherwise than in the current coin, within sect. 1 of the Truck Act, 1 & 2 *W.* 4, c. 37; nor was a contract in writing under sect. 23, necessary to legalise such deductions: **Held**, also, that there was not in this case any demise of a "tenement" within sect. 23; and *quære*, whether there was a demise of anything at a rent thereon reserved, within that clause. *Chawner v. Cummings*, 8 *Q. B.* 311.

TURNPIKE TOLLS.

Trustees.—Mortgage.—By a local turnpike act, the trustees were to apply all monies received by them by virtue of the act, upon the roads included in the act:—1st, in paying the expenses of and incident to the obtaining of the act; 2ndly, in paying and discharging any interest which might from time to time be owing in respect of money which might have been borrowed on credit of the tolls authorized to be taken by former acts, thereby repealed; 3rdly, in keeping the roads in repair; 4thly, in paying and discharging any interest on money which might thereafter be borrowed on the credit of the tolls; 5thly, in reducing and discharging the principal moneys borrowed on the credit of the tolls authorized to be taken by the former acts; and, lastly, in reducing and discharging the principal moneys which should be borrowed, &c.

Held, that a mortgagee of the tolls authorized to be taken by the former acts, had not a right of action against the trustees for money had and received, for the arrears of interest due to him, although it appeared that the expenses of obtaining the act had been paid, and that the trustees had in their hands sufficient money for the payment of such arrears of interest. *Par-doe v. Price*, 16 *M. & W.* 451.

Cases cited in the judgment: *Roper v. Holland*, 3 *A. & E.* 99; *Bartlett v. Dimond*, 14 *M. & W.* 49.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 2, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

JOINT-STOCK COMPANIES WINDING-UP ACT.

IN adverting generally to the legal results of the Session, the Joint-Stock Companies' Act, (11 & 12 Vict. c. 45,) which received the Royal Assent on the 14th ult., was noticed as a measure which, from its comprehensive character, as well as the great and increasing importance of the subject, and the numerous interests affected by it, was peculiarly deserving of consideration.

As our readers are aware, the act 7 & 8 Vict. c. 111, authorised the Court of Bankruptcy to direct the assignees of a bankrupt company to petition the Court of Chancery for directions for winding-up the affairs of such company, and upon this petition it was competent for the Court of Chancery to make an order of reference under which accounts might be taken, and upon the confirmation of the Master's report, a receiver appointed. That statute also empowered the Lord Chancellor, with the assistance of the other Equity Judges, to make rules and orders for settling and enforcing contribution amongst the members of insolvent joint-stock companies. These provisions, we have reason to think, were not sufficient for the purposes contemplated, and have never been brought into effective operation. The expediency of providing some effectual means for summarily winding up the affairs of companies unable or unwilling to meet their pecuniary liabilities, appears, however, to have very strongly impressed itself upon

the public mind, and the act under consideration was framed with the specific object of facilitating the dissolution and winding-up of joint-stock companies and other partnerships, and passed through both Houses of Parliament with very general concurrence.

Shortly after the bill was introduced in the House of Commons by Mr. Milner Gibson, an epitome of its provisions appeared in this publication, vol. 35, p. 429, and the alterations made in the bill during its progress through parliament, a summary of which is now annexed, although far from being unimportant, cannot be considered numerous, regard being had to the nature of the subject, and the number and complexity of the enactments.

Before referring to the new clauses introduced in the act, it will be convenient shortly to describe the scope and object of the measure. It provides, that any member, or other person liable to contribute to the payment of any of the debts, liabilities, or losses of an insolvent company, may petition the Lord Chancellor or Master of the Rolls, in a summary way, for the dissolution and winding up of the affairs of the company, and thereupon the Court may make an order, *nisi* or absolute, for dissolving and winding-up the company under this act, and to refer it by such order to one of the Masters for this purpose. From the date of any order absolute for dissolution, or from any date therein fixed for that purpose, the company is absolutely dissolved, and after such order the assets are not to be

disposed of otherwise than by direction of the Master, who may appoint, in the first instance, an *interim manager*, and subsequently an *official manager*, (described in the earlier prints of the bill as "official Trustee,") in whom all the estate, effects, and credits of the company are to vest, and whose duty it is, under the direction of the Master, to make up the accounts, and wind up the business and affairs of the company. By a special provision, (sect. 33.) the official manager is authorised, with the approbation of the Master, "to employ, and from time to time dismiss, an attorney or solicitor;" a species of patronage the exercise of which by a public officer may not unreasonably be looked upon with some degree of jealousy. All actions and suits by and against the company and its "contributories," are to be prosecuted in the name of or against the official manager, and all orders, decrees, and judgments against the official manager are to take effect against the company. The Master has power to summon any person, whether a member of the company or not, to give evidence as to the affairs of the company, and is authorised, not only to direct the payment of debts, but to make calls, and apportion the amount amongst these several "contributories" of the company; and it then devolves upon the official manager, with the approval of the Master, to enforce payment and distribute the assets. The general costs of winding up the estate, as well as the costs of proving debts and trying issues, are left altogether in the discretion of the Master, who may direct them to be taxed; and all costs ordered to be paid may be recovered in the same manner as costs to be paid under an order or decree made by the Court. An appeal is given to the Lord Chancellor or Master of the Rolls, upon motion, "from or against all orders, directions, reports, or other proceedings of or before the Master, relating to the winding up of the affairs of the company." Orders made by the Master of the Rolls, or any of the Vice-Chancellors, may be re-heard before the Lord Chancellor, and an appeal lies, from all orders of the Court, under this act, to the House of Lords.

Such is the general outline of the measure under which it is now proposed to dissolve and wind up insolvent companies. It will be observed, that neither the act just adverted to, (7 & 8 Vict. c. 111,) nor the Act to facilitate the dissolution of certain Railway Companies, (9 & 10 Vict. c. 28,) commonly known as Lord Dalhousie's Act, are

in any manner repealed by the new act, which indeed expressly provides, that when a fiat has issued against a company, no petition shall be presented for dissolution and winding up by any person, but the creditors' assignees, acting under the direction of the Court of Bankruptcy. The recent act contemplates those numerous cases in which co-contractors, partners, or shareholders, may deem it advantageous that the concerns in which they have unfortunately engaged, and for whose debts they are jointly liable, should be wound-up, under the superintendence and authority of the Court of Chancery, but it gives no authority to creditors of companies, in that character, to put the law in motion. It has long been the subject of general and well-founded complaint, that the remedies which the law gives to *bond fide* creditors against joint-stock companies are uncertain and insufficient, and it may be doubtful whether the powers given to "contributories" under this act might not have been advantageously extended to ascertained creditors?

It would be premature to anticipate whether the machinery supplied by this act is sufficient to insure the working of a system so novel and peculiar as that which it seeks to establish. A perusal of its clauses certainly suggests, that although considerable ability was employed in the construction, there is a deficiency of that minute practical knowledge, a disregard of which has rendered so many modern statutes inoperative or unsatisfactory in their operation. The adoption of expressions so unusual in acts of parliament as the word "contributory," the phrase "constitution of a company," and various others that might be selected, indicate an inattention to the established rules prevailing in the construction of acts of parliament, and beget an apprehension that, in matters of graver importance, precedent and authority have not been kept steadily in view. It must be admitted, on the other hand, that hardly any subject could be pointed out upon which legislative interference was more generally felt to be necessary, and that, considering the difficulty and novelty of the experiment, perhaps the course of procedure prescribed by the act is as little objectionable as any that could be devised. It should be added, that the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice-Chancellors, is empowered to make rules and orders concerning the form and mode of procedure, and the practice to be observed

by the Court, or before the Master, which rules and orders are to be submitted to parliament. By this means the mode of procedure under the act may be moulded and rendered conformable with the general practice of the Courts. In order to render the abstract of the provisions of the act already published complete, we subjoin a summary of the clauses added after the bill was laid on the table of the House of Commons, and which now form part of the printed act:—

Sect. 2 enacts, that the act shall apply to mining companies, and to benefit building societies not duly certified and enrolled under the statutes.

Sect. 39 provides; that any contributory who shall be an idiot or lunatic, shall be represented by his committee, and minors by their guardians.

Sect. 51 enacts; that all criminal proceedings on behalf of the company shall be prosecuted by and in the name of the official manager, against a contributory of the company or any other person.

Sect. 121 confers on the Lord Chancellor the power of appointing any number of persons he thinks fit to act as official managers under this act.

By sect. 123 the district commissioners of the Court of Bankruptcy and the judges of the County Courts, are appointed Masters Extraordinary of the Court of Chancery for the purposes of this act, and any matter depending under it may be referred to them, with the same powers and authorities given to the Master; the clause further provides, that the provisions as to general rules, &c., are to apply to such district commissioners and judges.

And sect. 127; provides, that the act shall not apply to Scotland.

As no particular period is prescribed in the act for its operation to commence, according to the ordinary rule it comes into force from the day on which it received the Royal Assent, which, as already stated, was the 14th of August last.

ILLEGALITY OF LOTTERIES AND SWEEPSTAKES.

OUR attention has been directed to the recent extension of the practice of wagering on horse-races, by means of what are called sweepstakes. No doubt this species of gambling has been set on foot and encouraged, in a great majority of cases, by the proprietors of public-houses and taverns, with the view of inducing parties to resort to their houses, and partake of refreshment; but we are quite satisfied many persons have become stakeholders, as well as sub-

scribers, to adventures of this description, who are unconscious of their illegality, and would not willingly be parties to any transaction prohibited by the law.

Persons who have innocently become parties to such proceedings will probably be surprised to learn, and persons who have not yet entered into such transactions may derive some benefit from being informed, that the matter has been under the consideration of one of the Superior Courts of Law, and that a subscription sweepstake, the event of which depends upon a legal horse-race, has, nevertheless, been expressly declared to be within the prohibition of the Lottery Acts, 10 & 11 W. 3, c. 17, and 42 Geo. 3, c. 119, in a case of *Allport v. Nutt*, 1 Com. Bench R. p. 974. The regulations under which money was subscribed, as disclosed in that case, are similar in all material respects to those generally adopted in schemes of the like nature, and were in substance as follow:—That the subscriber whose name should be drawn out of a box next after the name of the horse drawn out of another box, which horse should be placed first in the race, should be entitled to receive the stakes. In an action by the winner to recover the stakes from the holder, the illegality of the transaction was relied upon as a defence. On the part of the plaintiff, it was ingeniously argued, that a lottery was distinguishable from a sweepstake in this, that the party setting up a lottery receives from the purchasers of tickets more than the value of the prizes, whereas in a sweepstake all the money obtained from the subscribers is paid over to the winners. But even if it should be held that this transaction was in the nature of a lottery, yet it was contended, the statutes for the suppression of lotteries were to be restricted in their construction to lotteries in which an unfair advantage was taken, and did not render illegal a lottery which was perfectly fair. The Court of Common Pleas, however, was decidedly of opinion that effect must be given to the clear words of prohibition contained in the act 10 & 11 W. 3, c. 17, which declared all lotteries nuisances, and imposes a penalty on all persons who shall draw at any lottery. The 42 Geo. 3, c. 119, was directed more especially against that species of lotteries called "little-goes," but it also enacts that any person who shall keep open any lottery called a "little-go," or any other lottery whatsoever, not authorised by act of parliament, shall forfeit 500*l*. The subscription sweepstakes described was held

to be a lottery within the express words and clear intention of the statutes, and to be therefore illegal.

As certain parties are now industriously engaged in endeavouring to induce persons to subscribe to German lotteries, and we presume from the expenses incurred in printing and advertising, that the speculation is not wholly unsuccessful, we may observe, that in 1836, a statute was passed, (6 & 7 W. 4, c. 66,) which is still in force, "to prevent the advertising of foreign and other lotteries." This statute provides, that if any person shall print or publish, or cause to be printed or published, any advertisement or notice concerning or in any manner relating to any foreign lottery, or any lottery not authorised by act of parliament, every person so offending shall, for every such offence, forfeit 50*l.* It is quite clear, therefore, that those who so considerately propose to confer on her Majesty's lieges the title to certain chateaux and seignories on the banks of the Danube and the Rhine, by means of lotteries, are offending against the laws of this country, and for this reason, if no other, should be looked upon with suspicion.

OBJECTIONABLE COVENANTS IN LEASES.

TENANTS COMPELLED TO EMPLOY LANDLORDS' SOLICITORS.

It appears that the practice of introducing a covenant into a large class of leases, requiring the lessor's solicitor to be employed in preparing all assignments and under-leases, has of late become more frequent than formerly, and particularly in numerous building leases.

The subject having been brought to the notice of the Council of the Incorporated Law Society, a special committee was appointed to inquire into the practice, and such committee having made their report, the Council took the subject into their consideration, and came to the following conclusion:—

"That whilst the Council offer no opinion on the *legality* of the covenant, they consider that such covenant is highly objectionable, both as regards the public and the profession."

The practitioners in general will, no doubt, concur in this opinion, and discourage the further introduction of such restrictive clauses. The usage of the profession has been long established, that the solicitor of

the lessor should prepare both lease and counterpart at the expense of the lessee. There is a sufficient reason to support this usage, as the lessor's solicitor is generally alone in possession of the materials requisite for preparing the lease; but this reason does not apply after the lease has been granted. The solicitors for lessors should be contented with the advantage thus conceded to them, and not attempt to carry it farther, to the prejudice of their brethren in general.

We are aware that for this, as for many other practices, there is an *excuse*, though not a justification. We understand that some parochial and other boards pay a very inadequate remuneration to their solicitors, and purposely attempt to compensate them by the objectionable means of these oppressive and restrictive provisions.

Now, in the language of the resolution of the Incorporated Law Society, "such covenants are highly objectionable, both as regards the *public* and the *profession*."

The practice is objectionable, as regards the public, because it effects no beneficial object to the tenant, occasions much additional expense and trouble, and restrains him in the exercise of his right to choose his own solicitor. It is therefore opposed to public policy.

As regards the profession, it infringes the wholesome rules that solicitors are not to encroach on the province, nor transact business directly with the clients, of each other. It has the effect merely of putting money into the pockets of a few solicitors of landlords, instead of the larger number who are concerned for the great body of tenants.

With respect to the *legality* of the covenant, it may be compared to the attempts made in some parts of the country to compel a purchaser to employ the vendor's solicitor to prepare the conveyance—a contract which a Court of Equity would not enforce. Suppose in the present case that, notwithstanding such a covenant, the lessee employed his own solicitor to prepare an under-lease, or the purchaser of the leasehold interest employed his solicitor to prepare the assignment,—would this work such a forfeiture as a Court of Law or Equity would carry into effect? The landlord may restrain an under-letting or assignment altogether, or may require his licence to be obtained, but we question whether he can compel the tenant, or his assignee, to employ and pay his, the landlord's solicitor. We trust, for the credit of the profession, that such a question will never be brought into Court.

LAW OF ATTORNEYS.

PAYMENT OF COSTS UNDER PROTEST.—
TAXATION BY MORTGAGOR.

THE number just published of Mr. Beavan's Reports contains two important judgments of the Master of the Rolls, setting forth the grounds on which the Court proceeds in ordering the taxation of a solicitor's costs *after payment*. The first case relates also to the right of a mortgagor to tax the costs of the mortgagee's solicitor. That case was decided on the 28th January, 1847, and reported in the Legal Observer on the 27th February.* Mr. Beavan's report of the judgment is more full than ours, and, considering the importance of the subject, we shall submit the principal parts of it to our readers.

The circumstances of the case were as follow:—The mortgagor, (Parlabean,) in February, 1846, agreed with his mortgagee that the property which had been mortgaged should be sold, and undertook to pay "all usual and fair mortgagee's costs and charges." Mr. Harrison, the mortgagee's solicitor, on the 16th October, (the property having been sold in pursuance of the agreement,) delivered his bill of costs, amounting to 65*l.* 12*s.*, to the mortgagor's solicitors. Four days afterwards they stated that, as the bill was very heavy, and their client acted in the matter as trustee, the bill would have to be taxed, but that if payment were insisted on, the amount would be paid in full under protest. On the 5th November, the purchases were completed, and on the same day another bill of 8*l.* 8*s.* was delivered. The bills were objected to, but the solicitor refused to complete without full payment, and the mortgagor paid it under protest.

The Master of the Rolls, in his judgment, said, that a notion prevailed that where costs have been paid the transaction may be rendered nugatory without anything more to be done than to make a protest at the time, and afterwards to discover that there were some overcharges.

"Protest," said his lordship, "by itself is of no value. I do not know what it means, except this, that the party paying gives notice, that he will avail himself of every circumstance in the case to enable him afterwards to upset the transaction. This is what it really amounts to, although the parties try to give it a larger effect."

His lordship then adverted to a very prevalent notion, that an order of taxation could be obtained where a bill was paid of a greater amount than a solicitor would be allowed on taxation, if that payment were accompanied by an intimation of an intention to tax the bill; and proceeded to say—

"This has never been held; it has always been considered, that a man may pay to a solicitor more than the legal charges; and, if he do it voluntarily, and without circumstances affecting the solicitor with fraud, or improper conduct, this Court will not afterwards interfere."

"This petition is also misconceived in this respect: it proceeds on the notion that a mortgagor, having settled an account with the mortgagee, and paid the bill of the mortgagee's solicitor, is entitled, in this jurisdiction by petition, to quarrel with the account so settled, and tax the costs of the solicitor, not as between him and his client, the mortgagee, but as between the mortgagor and mortgagee; and further, that if charges be found in the bill of costs which the mortgagee could not maintain in an account between him and the mortgagor, they are to be disallowed. Such a notion is entirely erroneous, and so much of this petition as depends on this point falls to the ground."

The Master of the Rolls then referred to the case *In re Wells*, (8 Beav. 416,) and observed that—

"If I laid down, as has been supposed, any such proposition as this—that, when a bill has been delivered a full fortnight before the accounts were to be settled, and where every opportunity has been given to examine it (I do not say to tax it, because some difficulty might occur in the vacations), a taxation may be obtained by merely showing overcharges,—if I laid down any such thing, I think the case was wrongly decided; but if I held, where a bill of costs is delivered at the time of the settlement, and an opportunity to examine is refused, the solicitor saying, 'you must either pay it, or the settlement of the matter for which we have met cannot be completed,'—if I held, I say, that a payment under such circumstances of pressure cannot prevent a taxation, I think the case of *In re Wells* was right, and I will make a like order under like circumstances."

In conclusion his lordship said:—

"If I rightly understood the facts, this case is reduced to one of simple overcharge, in a bill delivered more than a fortnight before the transaction was completed. If that be so, even if overcharges do exist, I do not think it is a proper reason to open the bill, and order a taxation; and this petition must, therefore, be dismissed with costs."

In another case, the petitioner, (a Mr. Poore,) in August, 1846, became entitled to a sum of money, amounting to 16,666*l.*, standing in the name of four trustees, who, at his request, agreed to execute a power of attorney, on his giving them a proper release. Mr. Neate, the respondent, who acted for three of the trustees, delivered on the 27th November his bill for preparing the release, &c., amounting to 16*l.* 6*s.* 6*d.*, which was objected to by Mr. Waugh, the solicitor of the petitioner, the *cestui que trust*. The fourth trustee was represented by another solicitor. On the 10th of Dec. it was paid, after some deductions; Mr. Neate declining to deliver over the power of attorney, unless on payment of costs. Mr. Poore, on the 8th Jan., then presented a special petition to tax the bill, on the ground that it had been paid under pressure, and after protest, and because it contained unreasonable and extravagant charges, and also because the *cestui que trust* had been put to the expense of two sets of costs, in consequence of the employment by the trustees of two solicitors.

The *Master of the Rolls* said, that in this case the relation of trustee and *cestui que trust* existed between four persons and the petitioner *Poore*; the relation of solicitor and client between Neate and three trustees; and the relation of solicitor and client between the fourth trustee and other solicitors.

"The petition prays, that a bill which has been paid may be taxed; and it is asked, that I may adhere to the general rule, that a paid bill may be taxed, unless there be some reason against it. There is no such general rule. The general rule is, that a paid bill is not to be referred for taxation, and a case is taken out of that rule only by special circumstances and on special grounds. It is not the rule, that special reasons ought to be shown why a bill is not to be taxed, but, on the contrary, why a bill ought to be taxed."

"I think that the petitioner has been subjected to considerable hardship, because, by this want of agreement between the trustees, he has had to pay two solicitors when one might have been sufficient. He comes as *cestui que trust*, asking that the bill may be taxed; the taxation is to take place not as between him and the solicitor, but as between the solicitor and the trustees, his clients; and the question is, whether the trustees themselves could obtain the order, which is now asked, not by them, but by a party deriving his power to tax solely under the statute.

"I have stated, over and over again, that the statute does not alter the relation between solicitor and client; and though it gives the *cestui que trust* a right to tax a bill which is payable out of his monies, yet it does not entitle him to

say, that the solicitor is not entitled to receive all that is due, as between him and the trustees, his clients."

"The bill was delivered on the 27th of November. It was the subject of considerable discussion; some part was taken off, and the bill was paid on the 10th of December, under protest. Protest, I must again repeat, is nothing, unless there are other circumstances which justify a taxation after payment. It is material only as showing that the parties are inclined to quarrel with the bill; but I do not know what it amounts to, except as notice to quarrel with the bill if the facts make it expedient and right to do so. Then as to the employment of two solicitors, have I a right, under the statute, to visit upon the solicitor employed by three trustees, the consequence of a disagreement with the fourth, and that too at the instance of the *cestui que trust*, who has no such right under the statute: and has the *cestui que trust* a right to say to the solicitor employed by the trustee, 'you shall not have what you have earned from your client, because it would not be allowed as between me and my trustees?' I think not. The petitioner has misconceived his rights, and his petition must, therefore, be dismissed *with costs*."

UNITED LAW CLERKS' SOCIETY.

ON the 28th of June, at the Freemasons' Tavern, took place the 16th Anniversary Dinner of this Institution. Sir F. THESIGER was in the Chair, surrounded by numerous influential members of the profession. Amongst the barristers we observed, Mr. Daniel, Mr. Bilton, Mr. Freshfield, jun., (formerly the Bank solicitor,) Mr. Russell Gurney, Mr. Humfrey, Mr. Smythe, Mr. Southgate, Mr. Steere, Mr. W. H. Watson, and Mr. Willes.

The attorneys assembled in great numbers: amongst them were Mr. Barnwell, Mr. Bebb, Mr. Bird, Mr. T. H. Bower, Mr. C. H. Bower, Mr. Boys, Mr. C. Brown, jun., Mr. E. B. Church, Mr. G. Cox, Mr. G. S. Ford, Mr. Gaines, Mr. Gatty, Mr. Hall, Mr. R. Hall, Mr. Hawkins, Mr. Hayes, Mr. Jennings, Mr. Jones, Mr. Lavell, Mr. Lewis, Mr. Maugham, Mr. J. M. Morris, Mr. Ommanney, Mr. C. Parker, Mr. Secondary Potter, Mr. Reid, Mr. J. Rose, Mr. C. Sawbridge, Mr. Stocker, Mr. Twisden, Mr. J. Watson, Mr. Westmacott, and Mr. Westwood.

There were about 300 present.

The *Chairman* proposed the usual loyal toasts, with many appropriate and just remarks, which were responded to most cordially.

The Annual Report of the Society's proceedings was then read by the secretary.^d

Sir Frederick Thesiger, in proposing "Prosperity to the United Law Clerks' Society," stated, that although the Report they had just heard

^c *In re Neate*, 10 Beav. 161.

^d See the Report, p. 281, *ante*.

enumerated claims on the Society which far exceeded those of other years, it appeared to him those claims were the subject rather of congratulation than discouragement. If the Report had stated any diminution of the contributions to the Society, that circumstance would indeed have been a symptom that the Society was not so prosperous as it had been in former years. The increased expenditure proved that its objects had been carried out to their fullest extent, whereby its advantages became more apparent to the profession. It was not, therefore, a subject for despondency but of encouragement for increased exertion; and the various instances in which persons had been obliged to resort to the funds of the society, showed its importance on the one hand, whilst the donations of the several branches of the profession showed, on the other, the interest that was felt in its welfare. It was quite impossible to over-estimate the benefits of societies of this description:—in the first place, they induced those habits of prudence and principle which were essential to the formation of the moral character, and then they provided for those calamitous events to which all were liable. Although he was not disposed to substitute prudence for the moral virtues, yet he felt satisfied that no moral virtue could exist whose foundation was not deeply laid in prudence; and when they considered the adversities of this life, and the unexpected events with which the most prosperous of them might be visited, and from which none were exempt, what could be more admirable than the proposal to meet those chances which might happen to them all, and for which they ought to provide, as incidental to their common lot? There was an additional advantage enjoyed by this united Society: Union was strength not merely in a physical sense, it was moral strength.* Each member had an interest in the common character of all, and such social societies produced that advancement of moral character which it was so important on every account should take place. Every member of the profession, and especially (if he might be permitted to use the phrase) the higher branches of the profession, should feel it a duty to countenance and support a society of this description, because, although its advantages began at what might be called the lowest class, its influence extended even to the highest, for it was quite impossible to improve one part of the profession without every person feeling the advantage of it. It was very gratifying to find, by a perusal of the report, that the example which had been afforded by this Society was likely to be followed by persons in the same state of life as themselves, and that requests had been made from Manchester and other places, for particulars of the Institution, in order that their example might be followed elsewhere. When he considered the usefulness of the Society whose anniversary they were met to celebrate, he sincerely trusted it might continue to flourish, and that all who had the power, the influence, and the means, would feel it always to be their duty to support it to the

utmost. With this deep-seated conviction of the worth and excellence of the Society, he hoped it would enjoy a long-continued and lasting prosperity.

The list of donations having been read,

The *Chairman* again rose, and stated, that he had a very munificent donation to present, with which he had been entrusted. Those present were probably aware of his friend Mr. Chilton having brought an action against the London and Croydon Railway Company, and that he (Sir F. Thesiger) had the honour of being his counsel. Mr. Chilton never intended to put one farthing of the damages in his pocket, and after satisfying the expenses to which he had been put, and which he had an undoubted right to do, he determined to appropriate the surplus in gifts to different benevolent institutions, and had entrusted him with a cheque for 50*l.* for the funds of this Society. He had thought the act so good that he had been endeavouring to persuade some of his friends around him to expose themselves to a similar inconvenience, and to pay over the damages they might recover to the Society, but he had not been able to persuade any of them to do so, and he was afraid that, so far as regarded donations of this kind, they must confine themselves to the very liberal one of Mr. Chilton!

Mr. *Watson*, Q. C., then proposed the health of the Lord Chancellor, Lord Lyndhurst, and the other patrons of the Society. The learned gentleman commented upon the virtues and talents of the two eminent personages who were the patrons of the Institution, whose judgments would go down to posterity with those of Lord Hardwicke and Lord Eldon. He observed, that amongst the names of the Society's patrons who had presided at its anniversaries since 1832, were those of eminent members of the profession who would have given character and distinction to any society. But he wished to impress upon the members that their real patrons were their Committees and Stewards, who had brought the Society successfully through so many years, and whose exertions had raised it to its present prosperous position. He observed, that in the past year alone the Society had expended 1,351*l.* 14*s.* in assisting members, non-members, their widows and families; he wished all to consider how much distress and suffering had been alleviated by the great assistance the Society had thus afforded. The officers had shown great energy and skill in conducting the affairs of the Society, and their exertions had been rewarded. He hoped the Society would also promote the individual welfare of the members, who should not forget that in this favoured country every position of honour might be obtained by prudence and honourable conduct. Lord Somers and Lord Hardwicke were both law clerks, and they owed their exalted positions and lasting fame to their own untiring industry and indomitable perseverance, accompanied by unimpeachable integrity, without which no permanent prosperity could be expected.

Mr. *Russell Gurney*, in proposing the health

of the Judges of England, stated, that in such an assembly few preparatory observations were necessary to introduce such a toast. The judges of this country were not only celebrated for wisdom and learning, but for their integrity and independence. Every one who came in contact with them agreed in this opinion. He was pleased to see that they were also benevolent and considerate, and notwithstanding their high position, they were not indifferent to the claims of a Society like the present, for almost without exception they were to be numbered amongst the Society's patrons. They supported it by their contributions and countenanced its proceedings by their frequent presence.

In introducing the toast of "The Bar and Profession,"

Mr. *Freshfield* stated, he supposed it would be conceded that 30 years' practice as a solicitor would entitle him to propose the health of the Bar. He now belonged to that learned body, and though only an honorary barrister, he thought that would warrant him in proposing the profession. Little need he said for the bar: they could speak well for themselves. To the professional aid of the bar every member of society was entitled. Their lives, their character and property were often dependent on the independence, the ability, and the zeal of their advocates. The profession at large, the attorneys and solicitors, also were entitled to much esteem. In them were reposed the secrets of families, and were that confidence violated, what irreparable injury would often result! Individuals and families might often be ruined. He was pleased to see that the profession, of which he was formerly a member, were also benevolent, and that they were, as they ought to be, the supporters of this useful and important society, established for the assistance of their clerks. He admired the comprehensiveness of the Institution, in affording assistance in almost all cases which the necessities of the law clerks required, and hailed the beneficial influence it could not fail to exercise over the character and conduct of its members, united as they were for promoting their moral and social advancement.

Mr. *Humfrey* returned thanks for the Bar, stating that he thought many of them would retire from that meeting better and happier men. He considered it a source of congratulation that the Society had not started at once into the good graces of the profession, but gradually obtained its support from the conviction of its utility. He had never been present before, but he sincerely hoped he should often meet them there again. He was much pleased at the spirit which seemed to influence the meeting. Every man could not be eloquent and great, but it was given to every one to be honest, industrious, and assiduous: to fulfil honestly and perseveringly the duties of his station. The Society afforded to its members a vast amount of good, and shut out an equal amount of evil. The profession ought to support the Institution, but the members must look to themselves for its chief support. In distress

you have a right to claim assistance, not as a matter of charity, but as a matter of right—an indefeasible right, not dependent upon the caprice or mistake of any one. There are many members who, when afflicted, do not need assistance, but many more do, and they can have recourse to the funds without suffering for an instant the painful suspense that the required aid may be refused. The Bar as a body would rejoice the more the Society prospered. He was delighted at witnessing its success, and hoped it would long flourish and prosper.

Mr. *Holme Bower* returned thanks for his branch of the profession, and warmly commended the Society and the good conduct, intelligence, and zeal of the Law Clerks.

Mr. *Steere* proposed the health of the Trustees, with several appropriate observations on the important duties which devolved upon them, and which they had kindly, and he need not say faithfully, discharged from the very commencement of the Society.

Mr. *E. B. Church* returned thanks, and, after apologizing for their absence, remarked that although the Trustees were no longer active members of the profession, they still felt a deep interest in the welfare of the Society, and would feel gratified for the honour conferred upon them. They looked back with sincere pleasure at what they had done for the Society, and considered their connexion with it as amongst the most happy incidents of their lives.

Mr. *Humfrey*, in proposing the health of the Chairman, said, that there was one only toast that would justify the liberty he had taken in again addressing the meeting, and that was, the health of their and his excellent and learned friend Sir Frederick Thesiger. It would, no doubt, be advantageous to the Society that they had on that occasion so distinguished an individual to preside over them; he had had the pleasure and the honour of knowing him for a period of 25 years, and ventured to say, and he wished that he could say it in the hearing of the whole profession, that a more excellent lawyer, a more high-minded gentleman, a more kind-hearted and humane man was not to be found within the wide range of that profession to which they respectively had the honour and the happiness to belong. He had seen him working his way by honourable and independent exertions to the highest places in the profession. He had seen him successively filling offices which ultimately raised him to the highest law office of the Crown, with the greatest dignity and courtesy of manner, with the most zealous regard to the interest of the Crown, but with the most careful and anxious attention to the liberty of the subject. They had seen him in authority filling the highest offices with the greatest distinction, and, if he would forgive him for saying it, they had seen snatched from his grasp by an accident the honour of filling almost the highest office in the profession to which he had honourably aspired. Out of office they had seen him the same high-minded person, and he ventured to say that those who knew

him best had never heard one word of repining, but he had gone on in the same honourable course previously pursued by him in his profession, of which he would still be one of the brightest ornaments.

The toast was most heartily and unanimously received by the meeting.

Sir F. Thesiger, in returning thanks, stated, that when he consented to preside over that meeting he fully expected that the ordinary compliment would be paid to him which every chairman had received, but he was wholly unprepared for the enthusiasm with which they had received the proposal of his health; he knew how often a generous impulse runs like electricity through an assembly; he looked within himself to see if he was worthy of the compliment which had been paid to him; and, although he could not acknowledge that he was entitled to it, yet he could not but feel that they perceived something in his conduct which made them agree with his learned friend. It was true that they had been long together in the profession, and what he was and what he had been was known to all; he believed all the credit which he could claim arose from the fact that he had always had the strongest regard for his profession, and had shown, as far as he was able, an anxious desire to preserve its high and honourable character. He felt that the current of circumstances had placed him at the head of the profession, but he had never been disposed to ascribe to merit what had been principally the work of Providence; he might have felt proud of the position in which he was placed, but he trusted he had never shown any undue elation; he hoped he had never exhibited to his professional brethren any but the kindest feelings, which they had always shown to him. His learned friend had thought proper to refer to an event which in a few days had deprived him of one of the most exalted offices of the profession, and had complimented him upon the manner in which he bore the disappointment. He had been fortunate throughout life, and hoped he was grateful for it; weak and miserable indeed should he have shown himself in character and mind, if he could not endure unmoved that disappointment which it was the lot of mortals to endure; he was proud to think that he had filled some of the most distinguished offices in their most distinguished profession, and when the hour arrived to render his office to more successful competitors, he trusted he had resigned it without the smallest mortification; had he done otherwise, he should feel himself disentitled to the esteem of his professional friends. Life was barren indeed without the good feeling of those with whom we associate. Providence had decreed their good opinion to be one of the highest rewards we can have; and he wished that he could on the present occasion express to them one-half of what he felt; but as that was impossible, he must assure them from the depths of his heart that the recollection of that day would make a deep impression on his mind, and he should feel that

in whatever circumstances he might be placed through life, the pleasant recollections of that evening could not be effaced from his memory.

MOOT POINTS.

CONVEYANCE WITHOUT CONSIDERATION.

THE answer of "T. W. H." (p. 349) to the query of "Civis," (p. 309,) appears incorrect.

The question is this:—Anne, being the devisee of a freehold estate, and having a sister Mary, who is the wife of John Cox, was persuaded by Cox about 10 [query, 15, see 3 & 4 W. 4, c. 74,] years ago to levy a fine and convey the property to Cox and wife under the [query, false,] pretence that the testator intended the latter to have the property.

Q. Is the transaction valid, or can it be set aside in equity?

Now, I should suppose that even between the parties themselves the false statement would violate the whole transaction, but being only a common lawyer, I cannot answer to this point. It seems clear, however, that even if the conveyance be valid as between the parties, it may be overreached by means of a sale to a friendly purchaser, and that the intervention of fine does not (as "T. W. H." thinks) make any difference.

The well-known statute, 27 Eliz. c. 4, makes void all voluntary conveyances as against subsequent purchasers. Mr. Burton says:—"It has been repeatedly decided, that a voluntary conveyance is void under this act against a purchaser, though he had notice of it before his purchase; the consequence of which is, (though probably never intended by the legislature,) that *it is impossible to make an absolutely irrevocable free gift of lands or tenements.* (Burton's Comp. pl. 225.) The rule prevails both at law and in equity, see fully, Sugden's V. & P. 924 to 944, (11th ed.); Story's Equity Jur. sect. 425, 426; 1 Smith's Leading Cas. 13.

It was laid down as long ago as 44th Eliz., that a fine levied in contravention of the act is inoperative. See Fermor's case, 3 Coke's Rep. 80, a.; see the notes in Thomas's edit.; also, Bayley on Fines, &c. 127, 128; Shepp. Touchst. 19.

LEASEHOLDS.—MORTGAGE.

With reference to the query of "L." (p. 348,) it is clear, that if the mortgage were a legal one and duly executed, the mortgagee became assignee of the reversion, and entitled, as soon as the mortgagor made default, to have the full rent paid to him as such assignee. No attornment from the tenant was necessary, nor could any arrangement between the tenant and the mortgagor prejudice the mortgagee's right, unless the latter were guilty of fraud, actual or constructive. A mortgagor in possession is at law a mere bailiff or receiver, without liability to account. Watk. Conv. by White, 15.

SPECIAL PLEADER.

TESTIMONIAL TO LORD CHIEF JUSTICE TINDAL.

A PUBLIC meeting of the inhabitants of Chelmsford and its neighbourhood was held at the Shire Hall, on the 19th August, to consider of some fitting testimonial to the memory of their respected townsman, the late Lord Chief Justice Tindal. Many of the clergy, the leading solicitors, and a considerable number of the most respectable inhabitants were present. The Rev. C. A. St. John Mildmay took the chair.

The first resolution was ably proposed by Mr. *Bartlett*, one of the oldest members of the profession in Chelmsford, and seconded by Mr. *Chalk*:—

“That this Meeting entertaining a high sense of the great ability, distinguished attainments, and exalted character of the late Right Honourable Sir NICHOLAS CONYNGHAM TINDAL, Knight, Lord Chief Justice of the Court of Common Pleas, and being desirous of transmitting to posterity the knowledge and recollection that, to the town of Chelmsford, belongs the boast of having been the birth-place of one whose character and reputation, in the high and important office to which he attained, reflect honour on his country,—is of opinion that this object cannot be better insured than by erecting in this, his native place, a Statue expressive of the high estimation in which his memory is held.”

Mr. *Gepp* supported the resolution, and re-

lated several interesting anecdotes of the late Chief Justice.

The next resolution was moved by Mr. *Round*, and seconded by Mr. *Baker*:—

“That in order to carry out the foregoing resolution, a subscription be entered into, and a Committee formed of the following gentlemen, viz.:—The Rev. C. A. St. John Mildmay, Mr. *Bartlett*, Mr. *William Baker*, Mr. *Thomas Durrant*, Mr. *Edward Butler*, and the Secretaries and Treasurers, with power to add to their number (three of whom shall form a quorum); and the Inhabitants of the Town of Chelmsford, and the Nobility, Clergy, and Gentry of the County, be respectfully invited to subscribe.”

The following resolution was proposed by Mr. *Butler*, and seconded by Mr. *Moss*:—

“That Mr. *T. M. Gepp* and Mr. *George Meggy* be requested to act as joint Secretaries; and Mr. *W. M. Tufnell* and Mr. *Chalk* as joint Treasurers.”

The Rev. *A. Pearson* and Mr. *Durrant* moved and seconded the following resolution:—

“That these resolutions be advertised in the county papers, and printed copies be circulated generally throughout the county.”

Mr. *Veley* proposed, and the Rev. *C. R. Muston* seconded the resolution:—

“That the thanks of this meeting be given to the Rev. C. A. St. John Mildmay for his able and efficient conduct in the chair.”

A liberal subscription was commenced. We shall shortly return to the subject, and gladly lend our aid in promoting the object in view.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Wenham v. Bowman. June 16, 1848.

COSTS.—ATTACHMENT.—VESTING ORDER.

A party attached for costs is not entitled to apply for his discharge because the party who has issued the writs of attachment proceeds against him for the same debt in the Insolvent Court and obtains a vesting order.

In this case (reported *ante*, p. 144.) Mr. *Wenham* applied to have the writs of attachment issued under the order made on the former occasion discharged, on the ground that when they were issued he was entitled to the benefit of the Insolvent Debtors' Act. It appeared that on the 27th of December, 1847, a vesting order had been obtained from the Insolvent Debtors' Court, on the application of the defendant in this cause, in respect of the sums for which the writs of attachment were issued. The order for the discharge of Mr.

Wenham, made by Mr. *Baron Platt*, bore date on the 8th of January last, and the writs of attachment which Mr. *Wenham* now sought to discharge were issued on the 11th of May. But although a vesting order had been obtained under the 1 & 2 Vict. c. 110, Mr. *Wenham* had not proceeded to file his schedule, as provided by the act, in order to obtain his discharge.

Mr. *Turner* and Mr. *Bilton*, for Mr. *Bowman*, contended that the mere vesting order had no operation to discharge Mr. *Wenham* from his contempt. He could be discharged from his contempt only by an adjudication under the 79th section. The 37th section provided, that if the petition of the prisoner was refused, the vesting order should be void; and the insolvent was not discharged even from any debt but those mentioned in his schedule, which ought to be filed within 14 days after the making of the vesting order.

Mr. *Wenham* urged, that Mr. *Bowman* ought not to take two different proceedings

against him, in respect of the same matters at the same time.

Lord Langdale, after stating the facts of the case, said, that the effect of the vesting order was to vest the property of Mr. Wenham in the provisional assignee of the Insolvent Debtors' Court. After that had been done, application was made to Mr. Baron Platt to discharge Mr. Wenham, but the order then made for his discharge was itself afterwards discharged by the Court of Exchequer. He saw no reason for imputing fraud to Mr. Wenham on that occasion, but he thought that the order for his discharge was improper. The application was made to this Court, and, considering then, as he still did, that the parties should be replaced in the same situation as they were in when Mr. Baron Platt's order was made, he had allowed new writs of attachment to be issued, which he regarded as only a renewal of the former writs. He must, therefore, now consider whether Mr. Wenham would have been entitled to apply to this Court for his discharge if no change had taken place in his position since the 27th of December. Now the Insolvent Debtors' Act had most mercifully and wisely provided means by which a party might be discharged from his debts, but that process had not been taken here. Mr. Wenham had declined to file his schedule, therefore he had not entitled himself to the benefit of the act, and might never be entitled to it. But then it was said that two different proceedings ought not to be taken against him simultaneously,—that he ought not to be "twice vexed." How was that? The debt was constituted by the order of this Court. Application was made upon it to the Insolvent Debtors' Court. A vesting order was made, not destroying the debt, nor giving authority to distribute the property till adjudication. Mr. Wenham had the means of obtaining his release by obtaining adjudication, but he could not be entitled to the benefit of the act before he had done so. The motion must be refused with costs.

Vice-Chancellor of England.

Jenkins v. Briant. June 28, 1848.

ARREARS OF ANNUITY.—INTEREST.

The arrears of an annuity do not carry interest.

In this case a suit had been instituted for the purpose of administering the estate of a testator, John Briant, and by a decree in the cause a reference had been directed to the Master to inquire what had been done in respect of an annuity granted by the testator by a post-nuptial settlement and secured by a covenant. The Master, by his report, found that a certain amount was due for arrears of the annuity, but as the reference did not include any direction as to interest, he did not make any allowance in respect of interest on the arrears.

Mr. Bethell and Cole, for the plaintiffs, now contended that interest was payable on the arrears, and that they were not precluded from

asking for such interest by the Master's report, inasmuch as the reference to the Master did not include any direction as to interest. They cited *Hyde v. Price*, 8 Sim. 59.

For the several defendants, for whom twelve counsel appeared, the case of *Booth v. Leicester*, 3 Myl. & Cr. 459, was cited.

The Vice-Chancellor said, that interest on the arrears of the annuity was not demandable, and that even if it could be demanded, the course of the proceedings had precluded the claim.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Ex parte Meyer, in re Meyer. June 5, 1848.

PROOF OF CONTINGENT DEBT REJECTED.

A. and B. and C. as his sureties, executed a joint and several bond to pay 750l. by instalments, conditioned that all was payable on the bankruptcy of A., B., or C. The 750l. was brought by A. into the partnership of himself and D., and A. and D. covenanted with B. and C. to indemnify them for having entered into the bond. A. and D. became bankrupt, and B., one of the sureties, paid the 750l. : Held, that he was not entitled to prove for it against the joint estate.

THE petition in this case was presented by Mr. Frederick Meyer, praying his admission to prove as a creditor on the joint estate of the bankrupts, E. S. Meyer and Brownsmith. The bankrupts, in April, 1847, became partners, Mr. Brownsmith bringing 2,000l. into the business, and Mr. E. S. Meyer agreeing to bring 1,700l. into the concern as his share of capital, and it was agreed that 750l. of that sum should be represented by that amount of his stock in a former business and 950l. in money. In order to enable him to do this he required to borrow 750l., which he applied to borrow from the Victoria Insurance Office, the directors of which agreed to the loan on the borrower assuring his life with them for 1,500l. and entering into a bond with two sureties for the due repayment of the money lent by three instalments of 250l. each, and for the due payment of the premiums on the policy. Mr. E. S. Meyer, with the approbation of his partner Mr. Brownsmith, applied to the petitioner, Mr. Frederick Meyer, and Mr. Trueman, to become his sureties, which was consented to on Mr. E. S. Meyer and Mr. Brownsmith entering into a joint and several deed of covenant with them for the due payment of the instalments of the loan and premiums on Mr. E. S. Meyer making default, and on Mr. Trueman undertaking to advance 100l. towards payment of the first instalment of 250l., to be payable by virtue of the bond. On the 12th of June the policy was effected, and on the 16th the bond was given, and the deed of covenant was executed on the 29th. The covenant was, that E. S. Meyer and Brownsmith, or one of them, their or one of their heirs, executors, or administrators, and was to bind their and each of their estate

separately, and, if default should be made by E. S. Meyer, himself pay the instalments and premiums according to the conditions of the bond. One of the conditions of the bond was, that the whole 750*l.* should become payable at once at the option of the office, in the event of E. S. Meyer, or Trueman, or F. Meyer, or either of them becoming bankrupt, insolvent, or unable to meet their engagements. The 750*l.* was duly received, and after a small sum deducted for expenses and the first year's premium on the policy, the balance was paid to the partnership and brought into the business. On the 20th of October following, (all in the year 1847,) a fiat was issued against E. S. Meyer and Brownsmith, and they were adjudicated bankrupt. On the 5th of November the office demanded payment of the 750*l.*, which was paid by Mr. Frederick Meyer, together with 22*l.* 1*s.* 9*d.* for interest, in discharge of the bond, and on 17th of January, 1848, Mr. Frederick Meyer tendered his proof on the joint estate, but the same was adjourned for the consideration of a Subdivision Court. On the 27th of the same month the case was argued before Commissioners Shepherd, Fane, and Evans, when they, with the exception of Mr. Fane, were of opinion that the debt was not proveable, and rejected the claim.

Mr. Bacon and Mr. Tripp, limiting the claim of proof to the 750*l.*, now supported the petition, contending that, on the 52nd and 56th sections of the statute 6 Geo. 4, c. 16, the same ought to have been allowed. They cited, and relied on *Exparte Myers*, 1 Mont. & Bl. 229, (reported as *Exparte Simpson*, 1 Mont. & Ayr. 541,) as conclusive on the point; and referred to *Exparte Brook*, *re Willis*, 12 Jurist, 411.

Mr. Russell and Mr. Aspland opposed the petition, contending that *Exparte Myers* had been, if not overruled, at least so modified, that it ceased to be any authority, and that the whole train of decisions showed that the principle of the common law, as well as the spirit of the two sections of the Bankrupt Acts, were opposed to the proof. They cited *Exparte Barker*, 9 Ves. 110; *Green v. Bicknell*, 8 Adol. & Ell. 701; *Yallop v. Evers*, 1 Barn. & Adol. 698; *Hinton v. Acraman*, 2 Mann. & Gran. 408; *Thompson v. Thompson*, 2 Bing. N. C. 168; *Abbott v. Hicks*, 5 Bing. N. C. 578; *Atwood v. Partridge*, 4 Bl. 209; *Toppin v. Field*, 3 Gale & Dav. 340; *Exparte Tindal*, 8 Bing. N. C. 407; *Exparte Eyre*, 3 Mont. Dea. & De G. 12; *Exparte the Lancashire Canal Company*, 1 Mont. 27; *Clements v. Langley*, 5 Barn. & Adol. 372; and *Wallis v. Swinburne*, 1 New Rep. 203.

His Honour. The application to prove here being confined to 750*l.*, it is very possible that had I to consider this case with my own judgment,—that is, independently of authority,—I should hold that, according to the true construction of the act of parliament in question, under some or one of its sections, the proof ought to be admitted. I do not know, however, that I am positively certain of it, nor is it very material. Such, however, is the inclination of my opinion. But a series of authorities

of great weight appear to me substantially irreconcilable with such a decision. So viewing the authorities, I cannot take upon myself to make a decision which, as it seems to me, would be a departure from them. I must, therefore, adhere to the view taken of this case by the majority of the Commissioners before whom it has been heard, acting, as I have said, upon authority, and upon authority only. The respondent's costs to be paid out of the estate, and the petition be dismissed.

Queen's Bench.

(Before the Four Judges.)

The Queen v. Thomas Gillyard. Trinity Term, 1848.

JURISDICTION OF QUEEN'S BENCH. — CONVICTION OBTAINED BEFORE JUSTICES BY FRAUD SET ASIDE.

The Court of Queen's Bench, in the exercise of its jurisdiction over all criminal proceedings in an inferior Court, will set aside a conviction obtained before justices, where it appears on affidavits unanswered, that such conviction was obtained in pursuance of a conspiracy.

Where a maltster had fraudulently procured a conviction against one of his workmen, for maliciously doing certain things prohibited by the Excise Laws, under the 7 & 8 Geo. 4, c. 52, s. 46, and had obtained a certificate under that section, this Court set aside the conviction, although the party convicted was not made a party to the rule, and although it was provided by the 7 & 8 Geo. 4, c. 53, s. 79, that in such case a writ of certiorari may issue out of the Court of Exchequer.

A RULE nisi had been obtained calling upon Thomas Haigh to show cause why a conviction should not be quashed on the ground that it had been obtained by fraud and collusion. It appeared from the affidavits, that Haigh was a maltster, carrying on business at Alverthorpe-with-Thornes, near Wakefield, in the county of York, and that the excise officers in that district, having had reason to suspect that he was in the habit of defrauding the revenue by committing breaches of the excise laws, set a watch upon his premises, and discovered the defendant Gillyard, with several others, engaged in forwarding certain of the malting processes contrary to law; that proceedings were threatened against Haigh, who thereupon charged the illegal acts upon his men, and declared that what had been done was without his knowledge; that he laid an information against his servant Gillyard, under the 7 & 8 Geo. 4, c. 52, s. 46, which enacts, that the servant of any maltster who shall be guilty of the offence therein specified, shall be liable, on conviction, to imprisonment for any time not exceeding twelve months, "Provided that nothing herein contained shall extend to repeal, alter, or affect any penalty on the maltster in whose service such workman was employed, but that such maltster shall continue liable to

all the penalties, unless such maltster shall forthwith prosecute such workman to conviction, and shall, before the recovery of any such penalty, produce to the Commissioners of Excise a certificate of such conviction, and of the workman having suffered such punishment." Gillyard was summoned before two justices, and having pleaded guilty, was sentenced to three months' imprisonment. It further appeared that Haigh had obtained a certificate under the 46th section, and that the excise officers had reason to suppose that Haigh had procured the conviction fraudulently to protect himself.

Mr. Pashley now showed cause. This case has already been decided by a Court of competent jurisdiction. The justices had all the witnesses before them, and were competent to decide on the facts disclosed in evidence, and this Court will not grant a new trial in a criminal case where there has been an acquittal. *Rex v. Maubrey*,^a and *Rex v. Sutton*.^b Haigh is here charged with conspiracy, for which an indictment might be preferred; and in the case of attorneys, over whom the Courts exercise a strict jurisdiction, they will not call upon a man to answer the matters of an affidavit, if the offence imputed to him be of an indictable nature. *Stephens v. Hill*.^c Gillyard is not made a party to this rule, and if the conviction is quashed, he may again be liable to punishment. *Rex v. Benn and Church*,^d *Regina v. The Guardians of the Totness Union*.^e

The Attorney-General, (Sir J. Jervis,) and Mr. J. T. Ingham, were not heard.

Lord Denman, C. J. As to the motion to discharge this rule, I hold it to be quite without precedent that when the Court on consideration has granted a rule, and the facts stated to the Court are not complained of as untrue, that, on the same state of facts, the Court should be called upon to rescind its own resolution, and to declare that it had acted wrongly. I think the argument wholly insufficient to prevail against what has been done. Here a master maltster is stated to have incurred considerable penalties on account of the manner in which he omitted to comply with the provisions of an act of parliament, and to have acted in a suspicious manner by the way in which he resorted to the act of parliament to take proceedings against his servant for the purpose of screening himself from those penalties. The facts were all brought before us, and we had no doubt that, if those facts remained unanswered, this was a case of fraud and collusion for the purpose of defeating the just application of the law, and that it was impossible that this conviction should be allowed to stand. Haigh has had the opportunity of answering this statement of facts, and he has made no answer. There does appear to be something like hardship when a proceeding may be likened to what was done in the Star Chamber, where vague charges were made

against a man in his absence, and where he was not allowed the means to clear himself from the imputation of such offences. But where a specific offence is distinctly charged, and where a *prima facie* case in support of such a charge is offered to the Court, it is only matter of astonishment that a man in a respectable station in society can hold up his head and come into a court of justice to complain of such a proceeding in any respect, except as to its falsehood. If it is false,—if he knows that he is an honest man,—he will naturally be indignant at the charge, and will take the earliest opportunity to contradict it; instead of which he only says that there is some doubt whether a certiorari lies, and whether any proceedings can be adopted in this Court. Such a mode of answer clenches the charge. I do not entertain a doubt about it. Then shall a conviction thus obtained be allowed to stand? Shall a person thus protect himself by means of his own fraud because another Court may have jurisdiction in the matter? Shall this Court be deprived of its established and peculiar jurisdiction, that of presiding over all criminal proceedings in an inferior jurisdiction, and be prevented from interfering, either when a party convicted has been wrongfully prejudiced, or when the conviction has been fraudulently obtained, to raise a benefit to a person who seeks to avail himself at the cost of another of a wrong committed by himself? Such a statement cannot be made with a grave face. Suppose, instead of Gillyard going before the justices and pleading guilty to a charge, the extent and nature of which he probably did not know, there had been another person calling himself Gillyard, who had been brought before the justices and had pleaded guilty, and that fact had been brought before us; can it be said that we shall not interfere, but that we must allow a conviction so fraudulently obtained to stand? It would be questioning first principles to say that we ought not to interfere in such a case. To adopt such a doctrine would be to deprive this Court of one of the most useful jurisdictions which it exercises in this country. Fortunately it is not often that such cases arise; but I am glad to think that when such a case has arisen, it is our duty to create a precedent, and to teach a person who seeks to put a law of this kind in motion, that he shall not do so without answering to this Court, and clearing himself from the charge. I am of opinion that there is no ground for discharging this rule, but that there is good ground for its being made absolute.

Mr. Justice Coleridge. I am of the same opinion. This is a rule for quashing a conviction, and the ground is, that the proceeding before the justices has been a mere mockery, nay worse, a dishonest and fraudulent proceeding, founded on conspiracy and subornation of perjury. When the Court sees this I think it ought to interfere. It is said that the affidavits impute a conspiracy of a gross kind. So they do. Haigh is called upon to answer, and instead of making any affidavit, he contents himself with taking certain technical objections

^a 6 T. R. 619.

^b 5 B. & Ad. 52.

^c 10 Mee. & Wels. 28.

^d 6 T. R. 198.

^e 2 New Sess. Cas. 82.

If he will not come here and say that the charge imputed to him is not true, he cannot complain that this Court takes it *pro confesso*.

Mr. Justice Erle concurred. Rule absolute.

Court of Eschequer.

Maile v. Mann. May 30, and July 13, 1848.

ATTORNEY.—LIABILITY FOR BAILIFF'S FEES OF EXECUTION.

The attorney, and not the principal, is the party liable to the sheriff's bailiff for fees payable upon a ca. sa.

THIS was an action by a sheriff's bailiff against a plaintiff in a former suit, to recover fees due upon taking the defendant in that suit in execution. A verdict was obtained for the plaintiff.

O'Malley having obtained a rule calling upon the plaintiff to show cause why the verdict should not be set aside and a nonsuit entered,

Huddleston showed cause. This case was to be assimilated to that of a messenger in Bankruptcy; there the attorney is not liable, but the principal is, upon the ground that the attorney is the agent of a disclosed principal, (*Hartop v. Jukes*, 2 M. & S. 438). There are certain expenses to which a client is not primarily liable, as where an attorney sends papers to be copied, there the stationer knows nothing of the principal, but here the officer knows as much of the principal as he does of the attorney. In all the cases in which the attorney has been fixed, he has in some way made himself personally liable for the fees, but where nothing is done by the attorney but merely sending the writ to the office, he is not liable. (*Hart v. White*, Holt's N. P. C. 376.) There are conflicting decisions upon the question: it has been decided one way in the Queen's Bench, and another in the Common Pleas. [*Pollock*, C. B. Here the bailiff knows that the attorney is merely an agent acting for others. *Alderson*, B. This ought to be a ready money transaction; if the bailiff chooses to give credit, that is his own affair.] If there was no evidence to show that the attorney had made himself liable,

the principal is clearly the party to whom the bailiff must look for payment. *Newton v. Chambers*, 1 D. & L. 869. [*Pollock*, C. B. The question here really is, whether the attorney is employed to do the business, or to pledge the credit of his principal? *Alderson*, B. Is it not really a question, whether any person is liable? It is laid down that "the law knows no person who is liable to pay the sheriff for executing the King's writ." The sheriff can bring no action at common law, but then comes the statute 23 H. 6, which empowers him to take a fee upon every warrant; (*Dew v. Parsons*, 2 B. & Al. 562;) followed by 7 W. 4, and 1 Vict. c. 55, s. 2, making it lawful for the sheriffs and their officers to demand and take such fees as shall be allowed by any officer of a Superior Court, under the sanction of the judges of that Court; thus at the same time giving the right to fees and to bring an action for the recovery of them. He also cited *Maybery v. Mansfield*, 16 L. J. Q. B. 102; *Robins v. Bridge*, 3 M. & W. 114. [*Alderson*, B., referred to *Walbank v. Quarterman*, 3 C. B. 94.]

Cur. ad. vult.

Rolfe, B., now (July 13) gave the judgment of the Court. In this case the verdict must be set aside and a nonsuit entered. The case of *Foster v. Blakelock*, 5 B. & C. 328, is expressly in point: there it was decided, that the bailiff can sue the attorney. Then comes the case of *Walbank v. Quarterman*, in which this very point was decided, that the attorney, and not the client, is the party liable to the bailiff for his fees, upon the ground that he is the party who employs him. It was supposed that this decision was at variance with *Maybery v. Mansfield*, but that is not so, for there the action was by the sheriff, and not as here by the bailiff. The case of *Leigh v. Hudson*, 11 Jur. 613, is certainly the other way: there *Coleridge*, J., held that the attorney was not liable. That case appears to have been decided without the necessary material to form a judgment. We therefore are, under all circumstances, disposed to act upon the other authorities, and make this

Rule absolute to enter a nonsuit.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

LAW OF PROPERTY AND CONVEYANCING.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Law of Arbitration, 315.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

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Bankruptcy, p. 213.

Lanacy, p. 216.

Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.

Construction of Statutes, p. 332, 351.]

ABSTRACT OF TITLE.

Delivery of Conditions.—In a declaration in *assumpsit* by vendee against vendor, for the non-delivery of an abstract of title, one of the conditions of sale set out was, "that the vendor would deliver an abstract of title to the purchaser."

Plea, that it was part of the contract that the defendant should deliver an abstract commencing with a certain conveyance, dated 1843 only, and not be required to show any previous title, and that he did furnish such an abstract: *Held*, on special demurrer, to be bad, as amounting to the general issue. *Sharland v. Leifchild*, 5 D. & L. 139.

AGREEMENT.

Lease.—Stamp.—By writing under seal, reciting that *D.* had purchased, for the residue of a term, four messuages, in one of which the plaintiff resided, it was agreed that plaintiff should continue to reside in that messuage during the residue of *D.*'s interest, if plaintiff should so long live, at the yearly rent of 1s., and *D.* further agreed to assign all his interest in the said premises purchased by *D.* as aforesaid, to plaintiff, on payment of 140*l.* within a stated period: *Held*, 1st, That this was a lease. 2nd, That it was an agreement, and required an agreement as well as a lease stamp, inasmuch as the lease and the agreement comprehended distinct subject-matters. *Love-lock v. Franklyn*, 8 Q. B. 371.

Case cited in the judgment: *Wharton v. Walton*, 7 Q. B. 474.

COAL LEASE.

Grant for indefinite term of years.—A deed, which may operate either at common law or under the Statute of Uses, cannot, in pleading, be relied on as operating under the statute, unless an election that it shall so operate is expressly averred; and *quære*, whether an entry under such a deed is not conclusive of an election that it shall operate at common law?

Semble, under a grant to *A., B., and C.*, their executors, &c., of liberty to get the coal under particular closes till all the coal should be gotten, an interest passes to the executors of the survivor, provided the deed operates under the Statute of Uses. *Haigh v. Juggar*, 16 M. & W. 525.

Cases cited in the judgment: *Rosse's case*, Moor, 556; *Hayward's case*, 2 Rep. 526; *Green v. Miller*, 8 Bing. 92.

COPYHOLDS.

1. *Stamps and fees on admission of tenants in common in remainder expectant on the estate of one tenant for life.*—Copyhold land was devised to *A.* for life, remainder to five persons,

as tenants in common; *A.* was admitted. After his death, the five, having contracted to sell to *B.*, severally surrendered to the use of *B.* in fee, which surrender was accepted by the lord: *Held*, that *B.*, on claiming admittance, must pay five fees, and that the admittance would require five stamps. *Reg. v. Eton College*, 8 Q. B. 526.

Case cited in the judgment: *Holloway v. Berkeley*, 6 B. & C. 2.

2. *Steward's fees.*—*U.*, a copyholder tenant of the manor of *S.*, was owner of 16 separate tenements, holden by 16 separate copies of court roll, and 16 separate yearly quit-rents. He was admitted to the above tenements at five different times, and by five different titles. An Inclosure Act passed directing commissioners to allot the waste lands in *S.* among the owners thereof, in proportion to their rights and interests in the same. The act also directed that the lands should be held by the allottees under the same tenures, rents, customs, and services as the lands in respect of which they were allotted would have been in case the act had not been passed; and that, where the lands were held under different titles, or for different estates, the commissioners should distinguish the lands held for each of such estates and titles, and set out the allotments accordingly. The commissioners allotted to *U.*, in respect of his 16 copyhold tenements, five pieces of land, amounting in the whole to 49 acres, but did not distinguish in respect of which of the 16 tenements, or of what particular estates the five pieces were allotted. *U.* afterwards surrendered to the defendant the 5th allotment, and the defendant was duly admitted to the same. Before the Inclosure Act passed, when any person was admitted in severalty to a part of a copyhold tenement, the steward of the manor was entitled, upon such administration, to the same amount of fees as if such person had been admitted to the whole of such tenement. In an action by the steward to recover 16 fees in respect of the defendant's administration to the 5th allotment: *Held*, that such allotment must be considered as an allotment of a portion of each of the 16 former tenements, and that, therefore, the steward was entitled to recover 16 fees. *Evans v. Upsher*, 16 M. & W. 675.

3. *Mandamus to allow inspection.*—Where a claimant to copyhold property comes to the Court for a *mandamus* to compel the steward of the manor to give him inspection of the court rolls, and admit him as a copyholder to enable him to try his right to the property he claims, he must either swear positively that he is entitled to the property he claims, or set out his title, or good grounds for his belief that he is entitled to the property, in the affidavit used in moving for the rule. It is insufficient to swear "that he verily believes" that he is entitled to the property in question. *Ex parte Cooke*, 35 L. O. 439.

COVENANT TO REPAIR.

1. *Liability of Lease.—Habeas corpus in lease.*—

In an action for the breach of a covenant for repair in a lease, the tenant is not liable for acts done before the time of the execution of the lease, although the *habendum* of the lease states the premises to be held from a day prior to its execution. The *habendum* in a lease only makes the duration of the tenant's interest, and its operation as a grant is merely prospective. *Shaw v. Kay*, 1 Exch. R. 412.

2. *Liability of tenant.*—Defendant, on becoming tenant to plaintiff of a farm and out-buildings, agreed to keep the same, and at the expiration of the tenancy to deliver up the same in good repair, order, and condition. Breach, that he did not keep and deliver up the farm, &c., in good repair, &c. : *Held*, that on this contract to keep the premises in good repair, the tenant was bound to put them in that condition, and that the tenant was not justified in keeping them in bad repair because he found them in that condition; but the extent of these repairs was to be measured by their age and class. *Payne v. Haine*, 16 M. & W. 541.

Cases cited in the judgment: *Burdett v. Withers*, 7 A. & E. 136; *Stanley v. Towgood*, 3 Bing. N. C. 4.

CY-PRES.

A testator devised lands to *P. M.*, his brother, for life, remainder to the use of the first son of the body of *P. M.* for life; remainder to the use of the first son, and the heirs male of his body; and in default of such issue, to the use of all and every other the son or sons of *P. M.*, severally and successively, for the like interests and limitations as he had before directed respecting the first son of *P. M.*, and his issue of the body: and in default of issue of the body of *P. M.*, or in case of his not leaving any at his decease, then over. *P. M.* never had any issue.

Held, that all the limitations after that to the use of the first son of the body of *P. M.*, were void for remoteness, and that the sons of *P. M.*, if he had any, would not, by the application of the doctrine of *cy-près*, have taken an estate tail, inasmuch as such a construction of the will would be to make the estate devolve in a line of succession different from that which the testator had expressly designated. *Monypenny v. Dering*, 16 M. & W. 418.

Cases cited in the judgment: *Shelley's case*, *Ferne Cont. Rem.* 204; *Pitt v. Jackson*, 2 Bro. C. C. 52; *Smith v. Lord Camelford*, 2 Ves. jun. 698; *Vanderplaat v. King*, 3 Hare, 1; *Nicholl v. Nicholl*, 2 W. Bl. 1159.

DEVISE.

1. *Fee simple.*—The following devise was held to pass an estate in fee simple:—"I devise and bequeath all my real and personal estate, monies, securities for money, and all other my real and personal estate, of what nature or kind soever and whatever the same may be, which I am now possessed of, or which at anytime hereafter I may be possessed of or entitled unto, subject to the payment of all my

just debts, funeral and testamentary expenses, and the expenses of proving this my will, unto my dear wife Catharine, to and for her sole separate use and benefit." *Doe d. Roberts v. Williams*, 1 Exch. R. 414.

2. A testator devised as follows:—"I give to my wife Nanny, all that house, shop, and garden now in the tenure of *B.*, for her own sole use and purpose, and I also give to my wife Nanny, all that messuage, farm, and premises now in the holding of *C.*, to hold to her, my said wife, during the term of her natural life, and from and after her decease I give and devise the said messuage or tenement, and also the said farm and premises, given to my said wife for her life as aforesaid, to my son John. I give and bequeath to my son George, the lease of the farm rented of Lord *L.*, for his own use and benefit; and I also give to my son George that one acre of copyhold land I bought of *G.*, and also half an acre of freehold land adjoining that one acre of copyhold land." The will contained other devises, and at the end was this passage:—"And I give and bequeath and order the rents or interests that is behind, due, and unpaid, shall go and be paid to that person I have left the *estates and properties* respectively to. As to all the rest, residue, and remainder of my property whatsoever, and of what nature or kind soever, I give, devise, and bequeath the same to be equally divided between and amongst my said wife Nanny and her children, who have issues, share and share alike." *Held*, 1st, that a fee in the lands devised did not pass to George; for though the word "estate," in the operative part of a will, passes not only the corpus of the property, but all the interest of the testator in it, unless controlled by the context, yet where the word is not used in the operative clause of the devise itself, but is introduced into another part of the will referring to it, such word cannot be construed as having the effect of extending the meaning of the operative clause, whether prior or subsequent; 2ndly, that the children of the wife who had no issue at the death of the testator, did not take any interest under the residuary clause. *Doe d. Burton v. White*, 1 Exch. R. 526.

Cases cited in the judgment: *Denne v. Wood*, 7 Taunt. 35; *Gardner v. Harding*, 2 Moore, 565; *Randell v. Tuchin*, 6 Taunt. 410.

3. *Validity of condition against disputing devisor's competency.*—A condition in a will of real estate, that if the devisee shall dispute the will, or the testator's competency to make it, or shall refuse, when required by the executors, to confirm it, the disposition in favour of such devisee shall be revoked,—is valid at law. *Cook v. Turner*, 15 M. & W. 727.

Case cited in the judgment: *Stapilton v. Stapilton*, 1 Atk. 2.

4. *"Next heir."*—In 1786, a testatrix devised her real estate to her brother-in-law *T. K.*, and sister *A. K.*, his wife, for their lives; and from and after their deceases to her nephew *J. G. K.*, son of the said *T. and A. K.*, in fee; but in

case the said *J. G. K.* should not survive the said *T.* and *A. K.*, and should die without an heir lawfully begotten, then and in such case, the testatrix devised the same to the next heir of the said *T.* and *A. K.*, their heirs and assigns for ever.

The said *J. G. K.*, mentioned in the will, died in his parents' lifetime, an infant. After his death, another son of *T.* and *A. K.* was born, who was called by the same names. *A. K.* died 1795. The 2nd *J. G. K.* married and had issue a son, *J. K.*, and died in 1833. *T. K.* died in 1842: *Held*, that the "next heir," in the will, was to be construed to mean the person who should fill the character of true heir of *T.* and *A. K.*; that, therefore, the executory devise over took effect only on the death of *T. K.*, the surviving devisee for life, and the estate then vested in *J. K.*, who then filled the character of heir of *T.* and *A. K.* *Doe d. Knight v. Chaffey*, 16 M. & W. 656.

See *Cy Près*.

EASEMENT.

1. *User as proof of ownership.*—Declaration for obstructing a wharf of which plaintiff was possessed: plea, traversing such possession: issue thereon. Plaintiff having proved 60 years general user, defendant proved that, 30 years before trial, the parties through whom plaintiff claimed had accepted a lease of adjoining land, containing a grant of the use of the land in question, as the same had been theretofore used by the lessee as a sawpit and for laying timber.

Held, that the jury might, nevertheless, from the general user, infer that plaintiff was possessed of the land absolutely at the time referred to in the pleading. *Page v. Hatchett*, 8 Q. B. 593.

2. *Extinguishment by unity of ownership.*—*A.*, being a tennor of land, built two houses on it. The whole was then released to him in fee, "with all ways, easements, advantages, and appurtenances thereunto belonging, or therewith usually used, leased, held, occupied or enjoyed." By his will, he devised one house, and the appurtenances thereunto belonging, to *B.*, and the other to *C.*, in similar terms. During *A.*'s ownership of both, the entrance from the high road to the principal door of the house afterwards devised to *B.*, was by a set out carriage drive or sweep, entering from a high road, passing immediately in front of the house afterwards devised to *C.*, to *B.*'s door, and then returning round an oval garden in front of *C.*'s house, but at a greater distance from it, to the same point of entrance. *B.*'s house had a coach-house opening only into the high road, and a back entrance into the same. After *A.*'s death, *C.* made a fence across so much of the carriage drive as passed immediately in front of his house, and across the oval garden, leaving the further way to *B.*'s front door by the same carriage drive open. *B.* brought trespass, claiming the way as appurtenant to his house and garden: *Held*, 1st, that the way, as used in *A.*'s time, during the unity of

ownership in him, immediately in front of *C.*'s house, did not pass to *B.* with the house devised to him, under the words "appurtenances" in *A.*'s will; and 2ndly, *comme semble*, that it did not pass as a way of necessity, whether taken in the strict sense, or as a way without which the most convenient and reasonable mode of enjoying every part of *B.*'s premises could not be had.

Semble, nothing of absolute necessity to a building, e. g., a gutter in *alieno solo*, to carry off water, &c., is extinguished by unity of ownership. *Pheysey v. Vicary*, 16 M. & W. 484.

"ESTATE."

Construction.—The word "estate" in a will does not of necessity include real property, but its meaning must be taken as explained by the context.

Thus, where a testator, after devising certain real estates by his will, proceeded,—“I give all the rest of my household furniture, books, linen, and china, except as hereinafter mentioned, goods, chattels, estate, and effects, of what nature or kind soever and wheresoever the same shall be at the time of my death,” unto certain executors, in trust to dispose of the same as specified by the will: *Held*, that the word "estate" did not pass real estate. *Sanderson v. Dobson*, 1 Exch. R. 141.

ESTATE TAIL.

Devise.—A testator, after bequeathing his personal estate, devised as follows:—"I also give all my real estate in the counties of Pembroke and Carmarthen, to my eldest son John, as aforesaid, for his life, and to his eldest legitimate son after his death, and in default of such issue, I give it in like manner to my son Richard; and in case that he has no legitimate issue male, I then give it in like manner to the offspring about to be born from my dearest wife Bessy; and in default of such issue, to my own right heirs for ever: *Held*, that John took an estate in tail male, the words "eldest legitimate son" being *nomen collectivum*. *Lewis v. Puxley*, 16 M. & W. 733.

Case cited in the judgment; *Goodtitle v. Woodhull*, Willes, 592.

FIXTURES ANNEXED TO FREEHOLD.

Severable.—When a chattel has been annexed by its owner to another's freehold, but may, without injury to the freehold, be severed, it is not necessarily to be inferred from the annexation that such chattel becomes the property of the freeholder. Whether, in a particular case, it has become so or not, may be a question on the evidence; and a jury may infer, from user and other circumstances, an agreement, when the chattel was annexed, that the original owner should have liberty to take it away again. *Wood v. Hewett*, 8 Q. B. 913.

Cases cited in the judgment: *Rex v. Otley*, 1 B. & Ad. 161; *Mant v. Collins*, June 9, 1842.

FOREST RIGHTS.

1. *Trespass.*—An information filed by the

Attorney-General, suggested that information had been previously filed against the defendant for an encroachment by him on the royal forest of Waltham, by enclosing land thereon (about 12 acres) with a ditch and fence; and that, pending the judgment of the Court on a demurrer in that cause, the defendant had very lately commenced cutting down and clearing away all the holly trees and underwood on the land so inclosed by him; such trees, &c., being part of the vert and covert of the forest. The present information prayed that the defendant might be restrained from cutting any more trees or underwood growing within the forest. The answer stated that the defendant was seised in fee of the *locus in quo* by having bought it three years before; that it was not part of or within the forest, and that he cut the holly trees and underwood at the proper season, and in the course of the proper management of the estate, as it had been cut for the last 20 years: *Held*, that the vert of a forest is a necessary part of it; still as no irreparable injury to the vert was shown in this case, the act of the defendant, assuming the *locus in quo* to be within the forest, was a trespass in the nature of waste, which might be compensated in damages, and therefore, that no injunction could be granted. *Attorney-General v. Hallett*, 16 M. & W. 569.

2. *Intrusion*.—An information by the Attorney-General stated that the Queen was seised in fee of a certain forest, &c., and that she and all her ancestors, kings, &c., continually held and enjoyed the said forest, and the game of wild beasts and fowls of forest, chase, and warren, coming and arising from the said forest, and all rights, &c., without any disturbance, title, or claim, &c.; that the defendant, without any lawful warrant, right, or title, erected a fence, and dug a ditch in and upon the soil of the said forest, to wit, in and around 100 acres of land, being parcel of and within the said forest, and encroached and usurped thereon, and separated the same from the residue of the said forest, whereby the Queen could not have and enjoy the said forest, or the said game, and the said rights, &c., in as full and ample a manner as she ought, to, the great injury and disturbance of the Queen in the said forest, and to the great damage and destruction of the vert and venison of and in the said forest, &c. Plea, "that the place in which, &c., was not, nor was any part thereof, parcel of or within the supposed forest, *modo et formá*." *Held*, on demurrer to the plea, that the cause of action was ambiguously stated, and that the information must be considered in the nature of an action of trespass on the case for injury to the incorporeal right of forest, by interference with the game; and that, therefore, the plea was good, the defendant not being bound to make title to the land.

Held, also, that such a plea would be bad, if pleaded to an information of intrusion into lands of the Crown. *Attorney-General v. Hallett*, 5 D. & L. 87.

GRANT RUNNING WITH INHERITANCE.

The second count alleged that defendant with force of arms expelled, put out, and removed plaintiff and his family from the possession and occupation of plaintiff's dwelling-house, and kept them so expelled, &c. for a long time, &c.

Plea, an immemorial right of common on close H., appurtenant to land of which he was the occupier, and that, because the house was unlawfully erected on the close, so that, without pulling it down, defendant could not enjoy his common, defendant pulled down, prostrated and removed the house, and in so doing necessarily expelled, put out, and removed plaintiff and his family from the possession and occupation, and kept so expelled, &c., doing no unnecessary damage, &c.

Replication, that, before the time, &c., and before the land in the plea mentioned came to defendant, H., being seised in fee and occupier of the said land, granted license to plaintiff to fence off part of close H., and build a dwelling-house on such part; and that, before the time when, &c., plaintiff, in pursuance of such license, fenced off such part, and built thereon the dwelling-house mentioned in the second count, and in so doing laid out large sums of money, &c. And that, afterwards, the said land, and H.'s estate and interest therein, came to and vested in defendant, and the said land is that in respect of which defendant claims common.

Held, on demurrer to this replication—1. That the replication was bad, because it alleged a parol grant by H. to plaintiff of a freehold interest running with the inheritance; which grant without deed could not bind the defendant, a stranger. Whether or not it bound the grantor, *Quere*.

2. That the plea could not be construed as alleging that defendant pulled down the house while the family were absent, so that they could not return to it, and thereby were expelled; and therefore, that the plea was bad, because it justified the expulsion as made in pulling down the house, which was unjustifiable while plaintiff's family were therein. *Perry v. Fitzhove*, 8 Q. B. 757.

Cases cited in the judgment: *Winter v. Brockwell*, 8 East, 308; *Harvey v. Reynolds*, 12 Price, 724; *Monk v. Butler*, Cro. Jac. 574; *Hoskins v. Robins*, 2 Saund, 323, 328; *Hewlin v. Shippam*, 5 B. & C. 221.

LEASE.

1. *Determination by ejectment for forfeiture*.—The service by lessor upon lessee of a declaration in ejectment for the demised premises, for a forfeiture, operates as a final election by the lessor to determine the term; and he cannot afterwards (although there has not been any judgment in the ejectment) sue for rent due, or covenants broken, after the service of the declaration. *Jones v. Carter*, 15 M. & W. 718.

Cases cited in the judgment: *Rade v. Farr*, 6 M. & Selw. 121; *Doe v. Bancks*, 4 B. & Ald.

401; *Doe d. Morecraft v. Meux*, 1 C. & P. 848.

2. *Covenant to insure.—Forfeiture.*—A lessee covenanted to insure the demised premises in the names of the lessors, and in default of so doing, the lessors to have power of re-entry. Two months after the execution of the lease a policy of insurance was effected in the names of the lessors and the lessee.

Held, that the insurance was not effected within a reasonable time after the execution of the lease, and that a policy effected in the names of the lessors and the lessee was not a compliance with the terms of the covenant in the lease; and, the lessee not being able to make out a good title to the premises, that the vendee of the lease might recover back a sum of money paid by way of deposit for the purchase. *Penniall v. Harborne*, 35 L. O. 260.

See *Agreement; Coal Lease*.

LIEN ON LAND.

See *Vendor's Lien*.

LIFE ESTATE.

Construction of will.—A testator died possessed of freehold and copyhold land in parish A., and freehold land in parish B. By will he gave his freehold land in A. to his wife for life, remainder in fee to three other persons. In the next and last clause of his will he gave all his real and personal property whatsoever and wheresoever to his wife, her heirs and assigns for ever.

Held, that the two clauses in the will were not irreconcilable, and that the widow only took a life estate in the freehold land situate in parish A. *Doe dem. Snape v. Nevill*, 35 L. O. 369.

MARRIED WOMAN.

Acknowledgment.—Authentication abroad.—Notary's certificate.—It is not enough, in taking the acknowledgment of a married woman to a deed before commissioners abroad, to authenticate it by the certificate of a major-general in the army, verifying the affidavit of the certificate of the acknowledgment, and by an affidavit stating that there was no notary residing at the particular place. There must also be an affidavit proving the hand-writing of the major-general, and that he really held that rank. *In re Daly*, 35 L. O. 102.

MORTGAGEE'S RIGHT.

Entering before default.—Construction of deed.—In trespass *quare clausum fregit*, the plaintiff made a title under a mortgage deed of March 6, 1840, by which the mortgagor, H., demised premises to the plaintiff from thenceforth for a certain term, subject to a proviso that the demise should cease and be void if H. paid principal and interest by March 6, 1841, and interest at stated periods in the meantime; and to another proviso, empowering plaintiff to sell (after three months' notice,) if default should be made in payment of principal and interest at the times named.

Then followed covenants (among others) by H. to plaintiff, for payment of principal and

interest at the days appointed, and that, at any time after default made in such payment, it should be lawful for plaintiff peaceably and quietly to enter upon the premises, and from thenceforth, for the residue of the term, to hold the same and take the rents and profits without lawful interruption from H. or any other person, &c.

On pleadings in trespass, setting forth the deed, and showing that plaintiff had entered upon the mortgaged premises after the execution of the deed, but before March 6, 1841, and before default in payment, and raising the question, whether or not he had a right so to enter: *Held*, that the deed gave power to the mortgagee to enter before default, and before the day named for any payment. *Rogers v. Grazebrook*, 8 Q. B. 895.

Cases cited in the judgment: *Doe d. Parsley v. Day*, 2 Q. B. 147; *Doe d. Roylance v. Lightfoot*, 8 M. & W. 553, 559.

PRESUMPTION OF PROBATE.

Point not made at nisi prius, raised in banc.—On the trial of an ejectment, the lessor of the plaintiff claimed as assignee of a term of 999 years, which was traced from J.

A conveyance was proved, by which M. assigned the term to J., more than 50 years before the trial; and J. was shown to have had possession thenceforward; and it was proved that possession had been in parties claiming through J. down to a time within a few years of the trial. It also appeared that, before the conveyance to J., W. had released the term to M., by a deed reciting the will of E., a party entitled to the term, under which W. and M. each asserted an interest. Probate of the will was not put in, and no proof was given of search for it. It did not appear that W. was not the party entitled to the term in case of the intestacy of E. *Held*, 1. That a jury were not entitled to presume that probate of such will as was recited in the deed of release had been granted. And, therefore, that the title to the term was not traced from W. to M.

2. That, upon showing cause against a rule for a new trial, after a verdict for the lessor of the plaintiff, it was not competent to him to abandon his claim of the term, and insist that, independently of the will, the jury might presume an estate in fee from the possession. *Doe d. Woodhouse v. Powell*, 8 Q. B. 576.

REMITTER OF ESTATE.

An estate being limited by marriage settlement to the use of A. and his wife, and the heirs of their bodies, and A. having died, leaving his widow and three children, viz., G., an only son, and L. and H., daughters, the widow, in 1735, by a deed-poll, in consideration of an annuity granted to her by her son G., and of natural affection, granted, surrendered, and yielded up the estate to G. in fee; and he afterwards, during her life, suffered a recovery. The widow died in 1767; G. died without issue in 1779, having devised the estate to trustees to secure the payment of an annuity

to *W.*, the only son of his sister *L.*, (who was then dead,) and subject thereto, to *B.*, the eldest son of *W.*, for life, with remainder to his second son. In 1790, *B.* entered, on his father's death, into possession of the entirety of the estate, claiming under the will of *G.*, and subsequently did various acts in the character of devisee for life. In 1814, he suffered a recovery of one moiety, and in 1816, conveyed the entirety of the estate to mortgagees in fee. In 1818, *M.*, the descendant of the other co-parcener, *H.*, at *B.*'s request, suffered a recovery of a moiety, which it was declared should enure (subject to a term to secure a sum of money to *M.*) to the use of *B.*'s mortgagees: *Held*, on error, by the Court of Exchequer Chamber, (affirming the judgment of the Court of Exchequer.)—1. That the deed-poll of 1735 operated as a covenant to stand seised, and created a bare fee, determinable by the entry of the issue in tail. 2. That this bare fee did not, on the death of the widow, become merged in the reversion in fee in *G.*, as the estate tail subsisted as an intermediate estate; and that, although *G.*, being estopped by the recovery suffered by him, was not remitted to the estate tail, no right of entry accrued till his death, and therefore, the period of 20 years, for the operation of the Statute of Limitations against the issue in tail, was to be calculated from *G.*'s death in 1779, and not from the death of his mother in 1767; and that *B.*'s entry in 1790 was not barred by lapse of time. 3. That although *B.* entered under the will, and manifested an intention to take the estate under it, for his life only, that intention was immaterial, and he was remitted, *volens volens*, as to his moiety, to the original estate tail, which was barred by the recovery in 1814.

Held, also, (reversing the judgment of the Court of Exchequer.) that the entry and remitter of *B.* did not operate to remit *M.*, his coparcener, to the other moiety of the estate. *Woodroffe v. Doe d. Daniell*, 15 M. & W: 769.

Cases cited in the judgment: *Hawtrey's case*, *Dyer*, 1916; *Vavusor's case*, 3 Leon. 93; *Duncombe v. Wingfield*, Hob. 254; *Peniston's case*, *Noy*, 46; *Smales v. Dale*, Hob. 120; *Culley v. Doe d. T aylerson*, 11 A. & E. 1016; *Machell v. Clarke*, 2 Ld. Raym. 782.

SATISFIED TERMS' ACT.

Estate of Conusor.—In 1830, *A.* died seised in fee of lands, of which his eldest son *B.* was his tenant. On his death, *B.*, supposing him to have died intestate, entered on the lands, claiming them as heir-at-law, and in 1839 mortgaged them in fee, and levied a fine to confirm the mortgage; and at the same time, an outstanding term of 500 years was by his direction assigned to a trustee for the mortgagee. In 1835 *B.* sold the estate to the defendant, who paid off the mortgage; the legal estate in fee and the equity of redemption were conveyed to the defendant, and the term was assigned to a trustee for him, to attend the inheritance. In 1845 it was discovered that *A.* had executed

a will, whereby he devised the lands in fee to his second son, who thereupon brought ejectment to recover the estate from the defendant, and laid a demise in the name of the trustee to whom the term was assigned in 1835: *Held*, 1st, that *B.* had a sufficient estate to make him a good conusor of the fine; 2ndly, that by the operation of the 8 & 9 Vict. c. 112, the term had absolutely determined, and the plaintiff could not recover upon the demise laid in the name of the trustee. *Doe d. Cadwalader v. Price*, 16 M. & W. 603.

STAMP.

See *Agreement; Copyholds*, 1.

TITLE.

See *Abstract of Title*.

VENDOR.

Lien on Land.—A vendor of land, who has conveyed the legal estate to the vendee, has no lien on the title-deeds for the unpaid purchase money. *Goode v. Burton*, 1 Exch. R. 189; S. C., 34 L. O. 423.

Case cited in the judgment: Lord Buckhurst's case, 1 Rep. 1.

WELSH FINE.

Proof.—To prove the levying of a fine with proclamations in a Court of great session in Wales, the chirograph was produced, having one proclamation indorsed, and the plea roll of the same session at which the chirograph stated the fine to have been levied, contained an entry of a *licentia concordandi*, between the same parties and respecting the same premises as those mentioned in the chirograph:—*Held*, sufficient by virtue of the stat. 5 Vict. c. 32, s. 2. *Doe d. Cadwalader v. Price*, 16 M. & W. 603.

WILL AND POWER.

P. being in India, in 1840, entered the following instrument, attested by two witnesses: "Know all men," "that I make," &c., *E.* my "lawful attorney for me in my name and to my use, to ask, demand," &c., "or receive the possession of, or produce of, the rent of the freehold of," &c. "And I do empower her, the said *E.*, "to hold and retain all the proceeds of the said property for her own use until I return to England, and claim possession in person; or in the event of my death, I do hereby, in my name, assign and deliver to the said *E.* "the sole claim to the before-mentioned property, to be held by her during her life, and disposed of by her as she may deem proper at the time of her death: at the same time I wish it to be understood that I claim all right and title to the said property on my arrival in Great Britain, when the term of the said *E.*'s "occupancy shall be considered at an end." "In witness," &c.

The instrument was acted on as a power of attorney by *E.* Afterwards *P.* died in India, without returning to Great Britain, and left *E.* surviving: *Held*, that the instrument operated on *P.*'s death, as a devise to *E.* *Doe d. Cross v. Cross*, 8 Q. B. 714.

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DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 9, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

THE LEGAL RESULTS OF THE SESSION OF PARLIAMENT.

LAW OF ELECTIONS.

RESUMING the consideration of the legal results of the Session, we have to announce the postponement until next Session, of the Bill introduced by Lord John Russell, for preventing *Corrupt Practices at Elections*. The numerous cases in which Select Committees of the House of Commons reported that corrupt practices prevailed at the last general election; naturally attracted the attention of the public, as well as of the members of the legislature, to this subject, and after numerous discussions, and some unsuccessful attempts at legislation by individual members of the House of Commons, the matter was forced, as it were, upon the attention of government, and, at an advanced period of the Session, the bill was introduced by Lord John Russell, to some of the contemplated appointments under which we have already directed attention, (*ante*, p. 258.) The measure did not reach the House of Lords until the third week in the month of August, and it was then disposed of by a resolution which we have extracted from the votes, and deem worthy of recording as a precedent, which we should desire to see followed in all cases where important measures are submitted at such a time as to preclude careful and deliberate consideration. With a recollection of the numerous miscarriages occasioned by hasty legislation at the close of the Session, we should rejoice to see it established as a

rule, that no bills but those of an urgently pressing nature should be introduced into either House of Parliament after the end of June. The resolutions of the House of Lords, in reference to the Corrupt Practices at Elections Bill, were as follow:—

“That this bill, creating a new jurisdiction for the investigation of corrupt practices at elections for members to serve in parliament, contains principles and provisions of too great importance to be adopted and passed by this House, without ample time being allowed for their being fully discussed and deliberately considered, and it is therefore inexpedient that the same should be proceeded with at this late period of the Session.

“That this House acknowledges the great importance of the subject, and will be prepared to give its most earnest attention to any bill for the effectual investigation and conviction of the said corrupt practices, which may be brought to them, either early in the next Session, or at any subsequent period when due time can be allowed for the proper consideration of the same.”

LAW OF BANKRUPTCY, &c.

The course of legislation on the subject of the Law and Practice in Bankruptcy, during the present Session, has been somewhat remarkable. It has been for some time all but universally admitted, that successive patchings and changes have rendered this branch of jurisprudence peculiarly unsatisfactory to all persons concerned in its administration, and that an extensive amendment, founded upon some comprehensive plan, had become indispensably necessary. An active and influential association has for some years been organized in the metropolis,

with branches in some of the more important provincial seats of commerce, with the express and exclusive object of procuring such an alteration in the laws. The leading principle of those comprehended in this organization is, that according to the existing system the debtor is too leniently and indulgently treated, whilst the interests of the creditor,—or, as he is described in the reports of the association, the *unfortunate* creditor,—are overlooked, or, at all events, inadequately protected. Such being the prevailing feeling amongst the trading community, and the avowed spirit with which a change of the law had been advocated and agitated, it is curious to find that the only measure which has found favour in the sight of the legislature, in regard to the Law of Bankruptcy, is one which confers an unqualified boon and advantage on bankrupts, without affording any corresponding benefit to creditors. As our readers are aware, a bill was introduced in the House of Lords several months since, for the *Consolidation and Amendment of the Law of Bankruptcy*, which, after some discussion, was referred to a Select Committee, by which a mass of evidence was taken sufficient to fill a portly blue book, to which we may hereafter find an opportunity of adverting. The bill, however, has never found its way out of the Select Committee. A *Bankruptcy Court Regulation Bill* was also presented to the House of Lords early in the Session, which we find never obtained even a second reading. As some change has taken place in the Bankrupt Laws every Session for many years past, it was possibly considered to be unreasonable that the present Session should terminate without an act of this nature, and accordingly the *Bankrupts' Release Bill* was brought from the Lords so recently as the 21st August, and was passed and returned by the Commons without any unnecessary delay, and has received the Royal Assent. Let us not be understood as objecting to the principle of this bill, which proposes to furnish a remedy for a state of the law which it may be admitted requires alteration. The preamble states, what is undoubtedly the fact, "that it occasionally happens that persons in prison for debt, who have been adjudged bankrupt, and who have surrendered to their fiats, are nevertheless detained in prison during the proceedings under the bankruptcy; and that it also happens that bankrupts whose certificates have been refused are taken in execution by creditors who have not proved

their debts under the fiat, and are unable to obtain their release by an application to any Court of Justice. This state of things it is proposed to remedy by two short clauses empowering the Commissioners of the Court of Bankruptcy to order the release of such bankrupts. The clauses are as follow:—

"That where any person has been adjudged bankrupt, and has surrendered to his fiat, and obtained his protection from arrest, pursuant to the practice in Bankruptcy, if such person shall be in prison for debt at the time of his obtaining such protection, any Commissioner acting under such fiat may order his immediate release from prison, either absolutely or upon such condition as such Commissioner shall think fit: Provided always, that such release shall in nowise affect any rights of the creditor at whose suit he may be in prison against the debtor, except the right of detaining him in prison whilst protected from imprisonment by order of the Court of Bankruptcy.

"That if any bankrupt whose last examination shall have been adjourned *sine die*, or whose certificate shall have been suspended or refused, shall be in execution or be taken in execution under a *capias ad satisfaciendum* at the suit of any creditor who might have proved under the fiat, and detained in prison, any Commissioner acting under his fiat may order his release, after he shall have undergone such term of imprisonment, not exceeding two years, as to such Commissioner may seem a sufficient punishment for such offences as he may appear to such Commissioner to have been guilty of."

If these clauses had been introduced into a general measure for the amendment of the Law of Debtor and Creditor, they might be considered deserving of approval; but enacted without reference to the existing state of any other portion of the law, they only serve to render it more anomalous. For example, the maximum period to which the most fraudulent bankrupt, under the last clause, can be subjected to imprisonment is two years, whilst under the 1 & 2 Vict. c. 110, ss. 77, 99, an insolvent who has wilfully made false entries in, or omitted from his books, or has fraudulently discharged or concealed any debt, or mortgaged, made away with, or concealed, any part of his property, or has wilfully omitted anything from his schedule, is liable to be imprisoned for *three* years. It may be argued that two years' imprisonment is a sufficient punishment for any offence of which a bankrupt can be guilty as regards his creditors; but if this were conceded, it would not explain why it should be thought necessary to inflict three years' imprisonment upon an insolvent, when two years are deemed sufficient to satisfy justice as

regards a bankrupt guilty of precisely the same offence.

Amongst the sessional measures which have become law, we are glad to observe the *Petty Bag Office*, Court of Chancery Bill, the provisions of which were submitted to our readers shortly after it was laid on the table of the House of Commons by the Solicitor-General, (*ante*, vol. 35, p. 493). This measure, whilst abolishing various offices in the department to which it relates, and providing for the transaction of the business heretofore performed by those who held the offices now abolished, enacts generally that the services performed by the clerks of the Petty Bag, as attorneys for parties, may hereafter be performed by any attorney regularly admitted,—a practical improvement with which the public, as well as the profession, have good reason to be satisfied.

In addition to the Commons' Inclosure Act, printed *ante*, p. 324, a second *Commons Inclosure Bill* has passed both Houses, to the details of which, and also to the provisions of the *London City Small Debts Court Bill*, the *Insolvent Debtors' Court Bill*, and the various bills relating to the poor and parochial charges, we shall take an early opportunity of directing more particular attention.

We may now add, however, that the *Taxing Masters' Court of Chancery (Ireland) Bill*, the *Transfer of Landed Property (Ireland) Bill*, the *Register of Sasines (Scotland) Bill*, and the *Court of Justiciary (Scotland) Bill*, have obtained the sanction of the legislature, but that the bill has been withdrawn for assimilating appointments as regards the *Officers of Courts of Justice* in Ireland.

THE COUNTY COURT JUDGES

AND THE

ORDER IN COUNCIL.

THE Order in Council of the 11th August, directing that the 60 judges of the Courts should be paid, from and after the 30th September instant, by salaries instead of fees,* and that the salary of each judge should be 1,000*l.* per annum, was preceded, it seems, by a series of indignant—we are sorry we cannot add dignified—remonstrances, from the learned functionaries whose pecuniary interests were immediately affected, and addressed to the Lords Com-

missioners of her Majesty's Treasury. By an unaccountable indiscretion, after the Privy Council had come to a final decision on the subject, and notified that decision by a publication of the order in the London Gazette of Friday, the 15th August, the County Court judges allowed a portion of their correspondence with the Treasury to be published, the perusal of which certainly is not calculated to increase the respect in which it is desirable they should be held by the public. We availed ourselves of the earliest opportunity after the publication of the Gazette containing the Order in Council, to express a conviction that, upon public grounds, the reduction of emoluments, as determined upon, was injudicious and ill-advised, but we were not prepared to find a body of gentlemen entrusted with judicial functions, appealing to the public, through the press, against the decision of the executive government upon a matter of personal remuneration; and still less to find them enforcing their claims on the public purse with such a lamentable lack of judgment and delicacy as we find disclosed in the letters before us. Why was it necessary, for instance, in the letter of Serjeant Manning, dated the 18th July, and which he states was written at the request of Serjeant Storke, Mr. Starkie, and Serjeant Clarke, to refer to the salaries received by the Commissioners in Bankruptcy and Insolvency, and to add that "it would be invidious to compare the amount of their labours with those performed by the County Court Judges?" Or why refer pointedly to the amount of the retiring pensions to which the Bankrupt and Insolvent Commissioners are entitled? Still less can we admire the contents of the communication emanating from the meeting of the County Court judges, and dated July 27. The threat that not a few of the judges who had removed into the country and abandoned their practice at the Bar, would be compelled by the reduced amount of salary to return to it, is simply ludicrous; but the elaborate, though not very intelligible, calculation, entered into to prove that the return made to parliament does not fairly represent the working of the act, by showing how much had been received by suitors through the coercive process of the Court, suggests some very painful reflections as to the spirit and views with which the jurisdiction conferred by the act may have been exercised. That "the judges" have not allowed any modest diffidence to interfere with the appreciation of their own services

* Printed *ante*, p. 340.

in the discharge of their judicial duties is tolerably manifest from their statement:—“That having gained the confidence of the public in the discharge of their duties, and having been the instruments for carrying out a most successful experiment in the administration of justice, they feel considerably aggrieved that government should appear disposed to reduce their remuneration,” &c. Government, however, notwithstanding this pathetic appeal, has not only been disposed, but has actually given effect to the disposition, by reducing the remuneration in the manner already described, and the announcement of this resolution, we understand, was followed, not by the resignation of the County Court judges, but by an humble request to the Secretary for the Home Department, that the subject may be reconsidered. Sir George Grey’s answer to this request was easy enough. He had only to refer the petitioners to the paragraph in Serjeant Manning’s letter of the 18th July, wherein he states, “That if the mode of remuneration is altered in the manner proposed, no further change, either by increasing salaries, or by returning to payments by fees, appears to be allowed by the act.” We have no doubt the learned Serjeant’s construction of the 9 & 10 Vict. is correct, and that the salaries of the County Court Judges must remain at the amount fixed by the Order in Council, until they can persuade the Home Secretary to recommend parliament to pass an act augmenting the salaries of the judges. Perhaps when this alteration is proposed, the necessity will have impressed itself upon the legislature of affording the suitors of the County Courts the means of obtaining the assistance of competent professional advisers, and of introducing other obvious improvements in the system. Meanwhile, the County Court judges must be careful not to expose themselves to a repetition of the answer given in the House of Commons to the complaint of their bailiffs,—that “they were quite at liberty to fulfil the threat of resignation which they had held out.” And it is desirable they should bear in mind, that whilst the utmost exertions of a professional man from the commencement of a suit in the County Court to its final determination, is supposed to be sufficiently compensated by the payment of 15s., if there is to be anything like keeping or proportion in the system, the judge may be supposed to be liberally remunerated by a salary of 1,000*l.* per annum.

TAXES ON JUSTICE.

STAMPS IN LIEU OF FEES.

THE evidence of the Master of the Rolls before the Select Committee of the House of Commons, on fees in the Courts of Law and Equity, is of great importance in many respects. We extracted^b his lordship’s opinions on the system of taxing the suitors by numerous and enormous fees, and shall devote a separate article to the *Consolidation and Supervision of the Offices*, and another to the proposed “*Secretary of State for the Affairs of Justice.*”

In the meantime it may be observed, that a remedy for part of the evil, connected with the taxes on justice, was attempted to be carried into effect by the bill of the Solicitor-General for substituting Stamps in lieu of Fees. The alteration proposed by that bill would, no doubt, have effected an improvement in the mode of collecting fees, but it did not profess to reduce their amount. It would have secured by a simple process the due accounting for all the vast sums paid by solicitors on account of their clients, without any additional expense of collection. The money would be paid at the Stamp Office, and transferred to the Accountant-General’s credit at the Bank of England. There would be an end of the suspicion of fraud, or the apprehension of mistake, either by fee-receivers or fee-payers, and thousands of entries in the account books of the officers and the practitioners would have ceased.

The bill would also have had the effect of diminishing the number of officers or clerks in the Court of Chancery, many of whom are principally employed in collecting fees and keeping and rendering an account of them, and thus it might be expected that in a short time the staff would be diminished, expense saved, and consequently no inconsiderable portion of the impost taken off.

In the present state of the public finances there is but little hope of seeing justice done to the suitors, but it is evident that no long time will be permitted to elapse before the present or some other Ministry will find it absolutely incumbent on them to revise the system of taxation, and more especially the stamp department. When that takes place, the burdens upon the Courts of Justice, which operate to so large an extent in the delay or the denial of justice, will be largely mitigated, if not altogether relieved.

^b See page 3, ante.

TREASURERS UNDER THE COUNTY COURTS ACT.

ON the motion of Mr. George Thompson, a return has been ordered by the House of Commons "of the names, residences, and occupations of the several treasurers appointed by the Commissioners of the treasury under the provisions of the Small Debts Act, 9 & 10 Vict. c. 95, with the several District Courts for which each treasurer is appointed, the number of days in which each treasurer is engaged in the duties of his office, distinguishing the time occupied from home, the number of miles travelled in each circuit, the number of circuits in the year, with an account of any extra journies on other business of the Court, the salary paid to each treasurer, the salary or allowance to each treasurer for a clerk or assistant, and a separate account of the rate of mileage, daily allowance, or other travelling expenses, allowed to each treasurer for himself and his clerk."

LAW OF MARRIAGE.

FIRST REPORT OF THE COMMISSIONERS.

To the Queen's most Excellent Majesty.

WE, the Commissioners, appointed by your Majesty, "to inquire into the state and operation of the Law of Marriage, as relating to the prohibited degrees of affinity, and to marriages solemnized abroad or in the British Colonies," having taken evidence upon the first branch of our inquiry, and considered the same, have agreed to the following Report:—

We have first directed our attention to the question of marriages within the prohibited degrees of affinity, and to the law affecting such marriages.

We conceive that it is not necessary, in the discharge of the duty intrusted to us, that we should attempt to enter into any examination of the law, or practice, in respect of such marriages in the early ages of Christianity. In reference to this, it may be sufficient to state, that, for several centuries, marriages within certain degrees of affinity were prohibited by the Church, but that, by the authority of the Pope, dispensations were granted, though to what extent, and in what cases, we do not inquire. In England we apprehend that this was the state of the law up to the time of King Henry VIII. Marriages within the present prohibited degrees of affinity were null and void, unless dispensation had been first obtained.

The question, whether marriages within the present prohibited degrees of affinity were permitted by the law of God, was the subject of much discussion when King Henry VIII.

sought to be relieved from his marriage with Queen Katharine. This marriage was pronounced null and void by Archbishop Cranmer. From that period the Ecclesiastical Courts dealt with these marriages, at first, by pronouncing them null and void, notwithstanding one or both of the parties might be dead when the suit was sought to be commenced. But in the time of James I. the Courts of Common Law interfered, and prohibited the Spiritual Courts from proceeding to pronounce them null and void after the death of one of the parties.^a Hence all these marriages came to be called voidable marriages, in contradistinction to those which were void, as in the case of a marriage where there was a first husband or wife living at the time of the second marriage; or where one of the parties was a lunatic at the time of celebrating a marriage.^b Marriages therefore within the prohibited degrees were only voidable; and if they were not pronounced null and void, by the competent ecclesiastical tribunals, during the lives of both parties, their validity could not be afterwards questioned, nor the legitimacy of the children be impeached.

This state of the law continued unaltered in England until the year 1835, when the statute 5 & 6 W. 4, c. 54, (commonly called Lord Lyndhurst's Act,) passed.^c The effect of that statute was to prohibit the Ecclesiastical Courts from entertaining any suit for the purpose of pronouncing null and void marriages, within the prohibited degrees of affinity, celebrated before the passing of the act, and all such marriages celebrated after the passing of the act, were declared by it to be null and void.

This statute extends to Ireland; and, consequently, the law on this subject is the same in that country as in England.

The law of Scotland does not recognize, in this matter, the distinction between void and voidable marriages, but holds void, *ab initio*, all marriages contracted within the prohibited degrees of consanguinity or affinity. In that country the sister of a deceased wife is declared to be within the prohibited degrees, by the whole authority of the Church, and, generally, by lawyers. Doubts, however, have been stated, and upon strong grounds, by some eminent Scottish lawyers, whether that degree be within those prohibited, so as to render void the marriage which may be contracted by a widower with the sister of his wife.^d

A question has lately arisen, upon an indictment of one Chadwick for bigamy, as to what were the prohibited degrees intended by the statute of the 5 & 6 W. 4, c. 54:^e and the Court of Queen's Bench unanimously were of opinion, that the degrees intended were those

^a *Ray v. Sherwood*, I. Curteis Reports, 199. Appendix, No. 7 d.

^b *Turner v. Myers*, I. Consistory Reports, 414.

^c See the Statute, App. No. 47.

^d Q. 1141 a, c, 1142, 1144 a.

^e Q. 3 a, 23-4-5; an epitome of Evidence, p. xvii., (a.)

mentioned in the table annexed to the Book of Common Prayer.¹

It further appears, that many other questions of great difficulty, which have relation to such marriages, have been submitted to the consideration of eminent counsel, but have not received any judicial decision. We will state some of them:—whether a marriage had abroad between two English subjects, within the prohibited degrees of affinity, would be held null and void by the tribunals in England, if it were legal by the law of the country where it was solemnized; whether a *bond fide* domicile would make any distinction; and what would be the law if one of the parties were a subject of a foreign state, and particularly of the state where the marriage was solemnized.²

We have directed our inquiries to the laws of other countries with respect to marriages within the prohibited degrees of affinity, and more especially to a marriage with the sister of a deceased wife. From the evidence which we have taken, there can be no doubt that this last class of marriages is, of all those within the prohibited degrees, by far the most frequent; so much so, that it necessarily forms the most important consideration in the whole subject. When, therefore, for the future, we speak, in this Report, of marriages within the prohibited degrees, we intend, when it is not otherwise declared, to confine our observations to marriages with the sister of a deceased wife.

We find, from the evidence, that marriages of this kind are permitted by dispensation, or otherwise, in nearly all the Continental States of Europe.³ We have inquired upon what principle these marriages are permitted, or prohibited. In the Roman Catholic Church, they are prohibited as matter of discipline: but such prohibition may be, and is, dispensed with by the Pope, or where, from distance, resort cannot without great inconvenience be had to Rome, by others authorized by him; and upon this principle, that the Church, and not the Law of God, has imposed the prohibition; and therefore that the Church, for fitting reasons, may dispense with it.⁴

Protestant States on the Continent of Europe, with the exception of some of the cantons of Switzerland, permit these marriages to be solemnized by dispensation, or licence, under ecclesiastical or civil authority.⁵

With regard to the law on this subject in the United States of America, we cannot

better illustrate it than by quoting the following passage from the late Mr. Justice Story: he says: "In many, and indeed in most of the American States, marriages between a man and the sister of his former deceased wife are not only deemed in a civil sense lawful, but are deemed in a moral, religious, and Christian sense lawful, and exceedingly praiseworthy. In some few of the States, the English rule is adopted."⁶ And in a letter, which has been communicated to us, the same learned judge thus expresses himself: "Nothing is more common in almost all the States of America than second marriages of this sort: and, so far from being doubtful as to their moral tendency, they are, amongst us, deemed the very best sort of marriages. In my whole life I never heard the slightest suggestion against them, founded on moral or domestic considerations."⁷

In the Greek Church these marriages are considered incestuous, and unlawful, and are not allowed, either by dispensation, or otherwise. But in the case of a marriage, solemnized in Russia, between persons not in communion with the Eastern Church, it seems, that such a marriage, if permitted by the law or discipline of the community to which those persons belong, would not be invalidated by the law of the state.⁸

The opinion prevalent among the Jews is, that Scripture does not prohibit such unions; and so far are the Jews from regarding these connexions with disfavour, that, when there are children, the usual time prescribed for remaining in widowhood is abbreviated in such cases. The law and practice prevailing among the Jews as to this matter are stated with great clearness and ability in the evidence of their Chief Rabbi in this country.⁹

The various bodies of Dissenters in England do not appear to entertain the opinion that these marriages are interdicted by Holy Writ; or that they are in themselves reprehensible.¹⁰

We have been particularly desirous to ascertain the opinion of the clergy of the Established Church of England, on the two questions, whether the marriage with the sister of a deceased wife is prohibited by the Law of God; or, if not, whether it ought to be interdicted upon any other ground.

The number of clergy in England is so great, that we have found it impracticable to collect the opinions of the individuals composing that body. We have, however, to the utmost of our power, caused it to be known that we were ready to receive information from every quarter, and more especially from the clergy; and we have taken the evidence of those who were known, by their published opinions, or other-

¹ This table is known under the title of Archbishop Parker's table of degrees; it was published in 1563, and is referred to in the 99th Canon. Appendix, No. 48, 9.

² Q. 226, (note,) 1149 a; Appendix, No. 6.

³ Q. 206, b, d, 223, 233-5, 259, 280-2 a, 824 a, 875, 883, 965, et seq.; and App., No. 9-11, 25-6.

⁴ Q. 81-4, 463-7-71-4-9, 481-8, 965-7-8, 1034-63, 1155-6, 1162-8 b, 1166, et seq., 1312-3.

⁵ Q. 965, et seq.; Appendix, No. 9, 25, 26.

⁶ Conflict of Laws, chap. v. sect. 115. Ed: 1841.

⁷ See Evidence, p. 21, (note).

⁸ Q. 500, 1019-21; Appendix, No. 39.

⁹ Appendix, No. 35, see also Evidence, Q.

¹⁰ 84.

¹¹ Q. 81-4, 103 c, 184, 166-9, 633-5, 840-7, 954-7, 993-8; Appendix, No: 37-8.

wise, to have carefully considered the subject; and on both sides of the question.

We are satisfied that a great diversity of opinion prevails, among the clergy of the Established Church of England, upon both questions.^p We think that very many of them do not consider such marriages to be prohibited by the Law of God; but that the majority object to them either upon this, or upon other grounds.

In Ireland, the great majority of the clergy of the Established Church are represented as disproving of these connexions;^q which are rare also among the Presbyterians in that country; and are generally disapproved of by their ministers.^r

In Scotland, the opinion of the clergy is decidedly against these marriages.^s

Among the laity of the United Kingdom, divers opinions obtain; but we think that the prevalent feeling is against these marriages; and a large majority, if asked their opinion, without time for consideration, would express a very strong dislike and disapprobation of them. But, judging from the evidence before us, we cannot entertain any reasonable doubt that families of a religious and moral character have, in several instances, when such connexions have taken place among themselves or their friends, been perfectly satisfied, upon a consideration of the whole subject, that such marriages were not objectionable, either in a religious or moral point of view.^t We are persuaded, however, that comparatively few, either of the clergy or laity, have carefully considered the subject; unless where circumstances have forced it upon their attention.^u

In regard to the subject of our first Report to your Majesty, it became an object of great importance to ascertain, as far as was practicable, the effect of the statute of the 5 & 6 W. 4. Of the number of these marriages, prior to 1835, it was impossible to acquire distinct information: so that we could not institute a correct comparison between the effect of the law while such marriages were voidable, and the effect of the new law rendering them *ipso facto* void. It is clear, however, that, prior to the Act of 1835, these marriages were sufficiently numerous to attract the attention of the Legislature, and to call upon parliament to apply a remedy. That Act substantially rendered all past marriages of this kind valid, and secured

the issue against any chance of being bastardized by a decree of the Spiritual Court pronouncing the marriage null and void *ab initio*. So far the statute may be termed retrospective.

How far the prospective enactment of this statute, which declares such marriages for the future to be null and void, has attained the object which the Legislature had in view, we proceed to inquire. But we must first express our opinion that, whether successful in this respect or not, the statute was a wise amendment of the former law, in so far as it abolished the distinction between void and voidable marriage; for nothing could be more opposed to all just principles of jurisprudence than the permitting of uncertainty to attend the marriage state. Before the passing of this statute the husband or the wife might, at any period of their cohabitation, by instituting a proceeding in the Ecclesiastical Court, cause the tie that bound them to be broken, and their issue to be rendered illegitimate. Any person, from any motive, might, during the lives of the parties, cause the same to be done. It would be difficult to conceive a state of the law more opposed to all sound principle, tempting to the breach of it by hopes of impunity, destructive to the happiness of the parties, by rendering the bond uncertain; and sometimes subjecting them to the misery of having their own hopes, and those of their children, at the mercy of unprincipled extortion.

Towards the close of the year 1846, a limited inquiry was instituted, at the instigation and expense of some private individuals interested in this question, for the purpose of ascertaining to what extent the act of 1835 had been infringed, and whether any hardships were inflicted by the operation of that act, to such an extent as would warrant an application to Parliament for an alteration of the law. In stating the result of this inquiry, as it has been proved before us, we feel bound to observe, that although made at the instance of interested parties, it appears to have been conducted by gentlemen of intelligence, station, and character, and with discretion, as well as with perfect integrity and good faith. The inquiry was limited to a period less than three months, and a comparatively small portion of England alone: but five districts were selected with impartiality and discrimination, as likely to afford a test of the probable operation of the law throughout the kingdom. The districts consisted, 1st, of some of the manufacturing portions of Lancashire and Yorkshire; 2nd, Norfolk and Suffolk, and parts of Lincolnshire and Essex; 3rd, parts of Warwickshire and Staffordshire, including Birmingham and the Potteries; 4th, parts of Hampshire, Dorsetshire, and Devonshire, including Portsmouth, Southampton, Winchester, Dorchester, Plymouth, and Exeter; and 5th, the towns of Bristol, Bath, and Cheltenham, and their immediate vicinities. Besides these districts, an inquiry was also commenced within the limits of the Metropolis, but was not prosecuted to any extent, in consequence of the difficulty of obtaining information in so mixed

^p Q. 46, 81 a, 84 a, 101-2, 123, 165, 200-6, 267 a, 310, 382-5, 409, 420-1, 514, 556, 588, 590, 702-5, 762-3, 788, 874, 914, 925, 938, 1008-12, 1047-51, 1061-89-90, 1218-35, 1237-65, 1270 *et seq.*; Appendix, No. 1-5, 23-4.

^q Appendix, No. 4, f, l, 5, 27, 30 to 34 inclusive; 40-5 inclusive.

^r Q. 1094-5, 1111. Appendix, No. 28-9.

^s Q. 1141 f, 1147-8.

^t Q. 45, 62, 85, 100-2, 118, 227-9, 262, 267-9, 284, *et seq.*, 301-5, 372-4, 409, 520, 548, 590-1, 626, 688, 824-39, 874-6, 892-904; Appendix, No. 14, 15, 16-22, 36.

^u Q. 555-6, 1090, 1267, 1351.

and numerous a population, without any legal authority to require it.*

The summary of information thus obtained may be stated as follows, viz: Of marriages ascertained to have taken place in the districts alluded to, between parties within the prohibited degrees, 1364 have been contracted since Lord Lyndhurst's Act; and of these, upwards of nine-tenths have been contracted with a deceased wife's sister. There were discovered, in the course of this inquiry, 88 cases only in which the act had prevented an intended marriage; and, in these 88 cases, 32 are stated to have resulted in open cohabitation, without the sanction of any form or ceremony.†

Of the marriages thus ascertained to have been contracted, very few were between persons in the poorer classes. For though we have reason to conclude that such marriages are at least as frequent in those classes as in any other, and perhaps even much more so, the condition and circumstances of the parties render their affinity less observed, and consequently difficult to be traced without more elaborate investigation. On the other hand, among the parties contracting these marriages since, as well as before, the act of 1835, there are found to be many persons of station and property, and of unimpeachable character, and religious habits.

For the mode in which these numbers were arrived at, the details of the inquiry, and the impressions produced on the minds of the persons engaged in it, we refer to the evidence of the gentlemen who conducted the investigation.‡

We forbear to make any calculation deduced from this inquiry, limited in time and extent as it necessarily was, as to the number of marriages within the same degrees which have probably been contracted since 1835, and down to the present time, throughout the whole of England and Ireland; but it is probable that they would bear a proportion to those ascertained in the districts already referred to.

We cannot avoid the conclusion that the statute 5 & 6 W. 4, c. 54, has failed to attain the object sought to be effected by its prospective enactments. It has not prevented marriage with the sister, or niece, of a deceased wife from taking place in numerous instances; whether more or less numerous than before the passing of the statute, we have not, as before observed, sufficient data to enable us to form an opinion. But, without reference to any comparison of this description, the number of those marriages is so great as to justify us in saying, that the provisions of that statute, rendering them null and void, have not generally deterred parties from forming such connexions.

No doubt this is a great and continually increasing evil. On a low computation, such marriages must amount to thousands; but

from the nature of the connexion, and the secrecy which often attaches to it, their number cannot be accurately ascertained.

The evil is great; for as, beyond all reasonable doubt, such marriages, when celebrated in England or Ireland, are void, the consequences are disastrous to the parties and their issue, at once affecting all the relations of mutual duty and obligation, as well as the rights dependent upon *status*; nor less pernicious, in a public view, as exhibiting avowed disobedience to law by the open assumption of a sacred character which the law expressly denies. The doubts which exist as to the validity of these marriages, when celebrated abroad, under a variety of circumstances, add another evil consequence to those which we have enumerated.

We have endeavoured to ascertain why this statute has failed to attain its object; why so many persons, in defiance of its provisions, and the consequences of violating them, have still every year formed such connexions; and why the severer enactments of the statute have not, as far as we know or have reason to believe, proved more effectual than the uncertain consequences of the previous law. This is a problem not easily solved; but we think we may partly discern the causes of this state of things from a review of some of the more prominent arguments urged against these marriages, on the one hand; and, on the other, of some of the grounds alleged in support of such a change of the law as would allow them; and also from a consideration of the motives and circumstances generally attendant upon them.

Some persons contend, that these marriages are forbidden, expressly, or inferentially, by Scripture.‡ If this opinion be admitted, *cadit quæstio*. But it does not appear from the evidence that this opinion is generally entertained.

Others think, that though marriages of this description are not prohibited by Holy Writ, yet that, since from an early age they have been discountenanced by the Church, they ought, in deference to this authority, to be forbidden by law; but we do not believe that the bulk of the community have ever viewed the subject in this light.

We consider that the feeling against these marriages is, in a great measure, founded rather on a vague and uninformed assumption that they are prohibited by God's word, than on a mature examination either of the Scriptures, or of the law of the Church.¶

But the argument which is most strongly insisted upon is this, that marriage produces the most unreserved intimacy with the family of the wife; that all her relations become, as it were, the relations of the husband; and especially, that the sisters of the wife so live with the husband, and assist the wife in discharging so many of her duties towards him, that they are constantly, at all times and seasons, alone with

Q. 8 g, 184.

(a) Q. 7-8, 13-16. Appendix, No. 14, p. 140,

(b)

Pp. 1-18.

† Q. 206, 310-11, 420, p. 114; Appendix, No. 32, 35, 43.

‡ Q. 516, 532, 1141 f, 1147, 1151.

him; and if a possibility existed that hereafter the husband and sister-in-law might become husband and wife, cause would be given for the excitement of those feelings which might destroy the peace of the wife, or even lead to a criminal intercourse; that the great object ought to be to induce the husband to regard his wife's sister as his own; that to preclude the possibility of a future legal alliance is the best means towards this end; and that therefore such prohibition is a just and wise exercise of the power of the legislature.^a

Those, on the other hand, who defend and uphold these connexions, contend that the marriage with a wife's sister, so far from being prohibited by the Law of God, is inferentially permitted thereby.^b They assert, that it is beyond the proper province of the Legislature to interdict any marriages not prohibited by the Law of God; they say, that consanguinean marriages in this degree are prohibited by the Law of Nature, as well as by Scripture; but that no such abhorrence exists, or can be made to exist, of intercourse between a man and his wife's sister, as nature has implanted in respect to intercourse with his own sister:^c and they refer to the many cases where the wife, on her death-bed, has declared her anxious desire that her husband should contract marriage with her sister.^d

They contend further, that such marriages ought to be permitted for the advantage of the children who have had the misfortune to lose their mother: that the experience of the world has proved that they will take place, when circumstances occur which are calculated to bring them about; and that the laws of nearly all Europe have permitted them; and necessarily so; because all prohibitory laws against them have failed.^e

It remains for us concisely to state the circumstances which generally give rise to matrimonial connexions of this kind, and the various motives which, as we conceive, actuate persons in forming them.

We believe, that the fair and just inference, from the information before us is, that, in most instances, these marriages are neither prevented, nor produced, by any of the reasonings to which we have adverted, but spring out of a peculiar combination of circumstances, which, when they do occur, give rise to feelings naturally leading to marriage.

The common foundation of such marriages is the familiar intercourse which necessarily prevails between a man and his sister-in-law, when, upon the death of a wife, she assumes her sister's place in the care of her children, and in the superintendence of the domestic es-

tablishment. We believe, that among persons who have not passed the middle age, attachments will be very frequent, whenever the sister of the deceased wife comes to live under the roof of the husband. We think all experience has shown that the same circumstances which tend to form matrimonial alliances with persons, not connected by affinity, will, in some cases, create the same feelings between the husband and the sister of the deceased wife; because no natural repugnance exists to such connexions.^f They are prevented, however, more or less, by two considerations: viz., when a belief exists that such an union is opposed to Divine Law; and when there is a strong conviction that it is against the opinion of friends and of society, and a great desire to retain their good opinion.

Generally we are led to consider, that the number of those marriages will bear a proportion to the number of cases in which the sister of a deceased wife becomes an inmate of the husband's house. But many circumstances will necessarily affect the result; as age, religious feeling, anxiety to stand well with the world, even the occurrence of two sisters residing in the family instead of one.

It is evident that the strongest motives exist to induce the husband to desire the assistance of the sister of the deceased wife for the management of his household, and the care of his children. Such assistance will appear to him more or less necessary according to circumstances; but in all cases where there are children of a tender age, there is a vacancy made by the death of the wife which her sister appears, above all persons, qualified to supply.

It may be advisable to consider this part of the subject with reference to the community, as divided into three classes: the most elevated in rank and fortune; the next class; and the rest of the community.

Few of these marriages are found to have taken place among persons of a high station. But we do not attribute this to any stronger sense of religious or moral obligation than in other classes. On the contrary, the evidence shows that where circumstances have placed persons of elevated rank in situations likely to create such attachments, connexions of this kind do take place, as among other ranks. Probably the true reason why such marriages are rare in the highest class are:—1st, that the numbers of such class are small; 2nd, that in such class a sister less often occupies the place of a deceased wife. Wealth provides otherwise for the management of domestic affairs; governesses take the charge of children where considerations of expense do not intervene: relations have much greater facility of seeing the children, and superintending their education, without actual residence under the father's roof: even under the roof, the society is less closely domestic and private; and the desire

^a Q. 46, 313, 392, 496-9, 1225-31, p. 111, s. v., 1244; 1273.

^b Q. 409, 787, 1028, 1052 c, 1062. Appendix, No. 24.

^c Q. 47, 74-7, 1285-9.

^d Q. 8 e, f, 81, 84 f, 148, 517, 624, 685, 873, 970, 1071. Appendix, No. 20.

^e Q. 124.

^f Q. 64 a, 122, 172, 589-90-7, 912-26, 1039-30; Appendix, No. 16 d, 17-21, 36.

^g See Analysis, App., p. 140, (a) and (b).

of not offending the opinions or scruples of the world, be they right or wrong, is stronger. These considerations, we think, account for the small number of marriages of this kind in high life, without supposing that the feelings would be different, or differently governed, if the circumstances were the same.

In the next rank of life, the evidence shows that these attachments and marriages are frequent; and we believe frequent in proportion to the occurrence of the circumstances which would naturally give rise to them; that is, in proportion to the number of cases where the sister of a deceased wife takes up her residence under the husband's roof, the parties not having passed the middle age. We find that the relations and friends of both parties have in some cases readily assented to the contraction of such marriages; and in other cases, where a contrary feeling may have originally existed, they have not hesitated, upon a consideration of the subject, to sanction with their approval the connexion already formed.

We do not find that the persons who contract these marriages, and the relations and friends who approve them, have a less strong sense than others of religious and moral obligation, or are marked by laxity of conduct.

Among the poorer classes of society, we believe that, in a great majority of cases, where the sister of the deceased wife becomes an inmate of the house, and the parties are not advanced in age, the end of such a state of things is marriage or concubinage. The constant and familiar intercourse, the want of separate accommodation, and the entire privacy, give rise to feelings which, in the ordinary course of things, naturally will produce the consequences which we have stated. When a poor man with a family has the misfortune to lose his wife, some assistance for his domestic concerns becomes indispensable; assistance too for which he cannot afford to pay, and which must be rendered immediately. All circumstances and all feelings point to the sister of the deceased wife; and when once she becomes a permanent inmate, the result, in this class, is almost inevitable; cohabitation with, or without, the form of marriage.

On a review of the subject, in all these its different bearings, and effects, we are constrained, not only to express our belief that the statute 5 & 6 W. 4, has failed to attain its object, but also to express our doubt, whether any measure of a prohibitory character would be effectual. These marriages will take place when a concurrence of circumstances give rise to mutual attachment: they are not dependent on legislation.

We are not inclined to think, that such attachments and marriages would be extensively increased in number were the law to permit them; because, as we have said, it is not the state of the law, prohibitory, or permissive, which has governed, or, as we think, ever will effectually govern them.

We have endeavoured, faithfully and impartially, to set forth the result of our investi-

gation; but whether any, or what, measure should be introduced for a change of the law, either on the side of relaxation, or stricter prohibition, we must leave to the wisdom of the Legislature.

(Signed) J. LICHFIELD.
JAS. STUART WORTLEY.
STEPHEN LUSHINGTON.
A. R. BLAKE.
EDWARD VAUGHAN WILLIAMS.
AND. RUTHERFURD.

ATTENDANCE OF THE CHIEF JUSTICES AND CHIEF BARON AT CHAMBERS.

A PETITION having been presented by Mr. Anstey to the House of Commons, regarding the non-attendance of the Lord Chief Justice of the Common Pleas, *the Attorney-General*, on Friday last, the 1st inst., gave the following explanation from a letter received by him from the Lord Chief Justice:—

"I am much obliged to you for your note and the copy of the petition about to be presented by Mr. Anstey. The only observation which I have to make upon its contents is, that so far as they refer to me, they are founded in error. I am not on the rota for attendance at Chambers, nor is it any part of my duty as a Chief Justice to attend. In the arrangement of the judicial duties, that of the routine attendance at chambers has always been performed by the puisne judges; and neither the Chief Justices nor the Lord Chief Baron are in the habit of attending, although, under special circumstances, and as an accommodation to their brother judges, they may have attended on particular occasions. Previously to the appointment, of the three additional judges, in 1832, there was no regular attendance at chambers during the long vacation. In 1838 a resolution was adopted by the judges, that the last newly-appointed judge who had not before performed the duty should be the attending judge in the long vacation. The Chief Justices and the Chief Baron have considered that resolution to refer to the judges charged ordinarily with the duty of attending to chamber business, and have never held it to refer to themselves, or acted upon it. In the long vacation of 1846, following my appointment, I had an intimation from one of the judges that I was expected to attend chambers during that vacation. I disclaimed being subject to any such duty, and declined to attend. Since that time no communication on the subject has been made to me by any of the judges; but upon my return from the circuit last week I heard from my clerk that it was reported that I was about to attend chambers. I immediately stated that such report was not authorized by me, and that I did not propose to attend; and the notices referred to in the petition have none of them been issued by my direction, or had my sanction. I learn from the Lord Chief Baron that, upon his appointment, Lord Den-

man and the late Lord Chief Justice Tindal both intimated to him that it was no part of his duty to attend chambers, pursuant to the resolution of 1838; and the Lord Chancellor has given me permission to authorize you to state to the house that he considers that it is not my duty to attend upon the present occasion. I received your letter and the petition last night, and also letters from two solicitors; and, learning from them that there were some matters calling for an early judicial interference, I did not think it right to stand upon a question of strict obligation, but came to town this morning and directed immediate notices to be sent to the parties that I would attend at chambers to-morrow at 11 o'clock, and I shall attend accordingly, for a few days, in order that the public may not be inconvenienced while the judges make their arrangements for future attendance during the vacation."

The Attorney-General was sure that the house would acknowledge that the Lord Chief Justice had acted most praiseworthy in taking care that the public should not be put to any inconvenience; though that act of kindness on his part must not be construed into any admission that his attendance was obligatory.

The practitioners will, we believe, unanimously concur in the propriety of relieving the *Chiefs* from all attendance on the business at the Judges' Chambers. Indeed, amongst the practical improvements which we have frequently advocated, is that of transferring at least three-fourths of that business to the Masters of the respective Courts, and so far diminishing the labours of *all* the judges. It is manifest that applications for time to plead, for changing or restoring venue, for setting aside proceedings for irregularity, swearing affidavits, and other matters of routine practice, could be satisfactorily disposed of by one of the Masters sitting in rotation;—reserving only questions of pleading, evidence, and other important subjects, to be determined by one of the judges at appointed times. All parties would be benefited by such an arrangement, and we trust that the notice which has been taken of the subject in parliament will lead to the desired alteration. The Incorporated Law Society, two or three years ago, petitioned the House of Commons for this object, and the Metropolitan and Provincial Law Association advert to it amongst the various improvements in Common Law as well as Equity practice which are recommended in their Annual Report.

We shall have some further remarks to make on this subject in our next number.

CLOSE OF THE SESSION.—THE QUEEN'S SPEECH.

WE have in a separate article enumerated the legal labours of the Session, in the shape of Bills, whether passed or postponed, and may here record, that the Parliament was prorogued by the Queen in person, on Tuesday last, the 5th instant. We were not far out in our reckoning when we stated some weeks ago, that the 2nd or the 4th would probably be the day. Her Majesty's Speech, so far as relates to the reform or alteration of the Law, refers to the Acts for facilitating the Sale of *Incumbered Estates in Ireland*; the Amendment of the Law of *Perpetual Entails of Land in Scotland*; and the measures for the Improvement of the *Public Health*.

So ends one of the longest Sessions since the "Long Parliament,"—commencing on the 18th Nov. last, and having continued within a few days of ten months. We trust there will be no pressing occasion to meet for the (so called) "*Despatch* of business" till the usual time in February. A pause of four or five months in the business of legislation will not be too long, either for the makers, or the subjects, or the administrators of the laws.

MOOT POINTS.

LEASEHOLDS.—MORTGAGE.

IN the case referred to by "L," p. 348, *ante*, we apprehend, that inasmuch as the legal estate in the premises was vested in C., (the mortgagee), the release to B. was absolutely ineffectual, and consequently that C. (upon a proper notice being given to the lessee,) could maintain an action against B. for the amount of rent reserved in the lease; or eject him under the proviso for re-entry on non-payment.

H. P.
G. F. R.

REPUTED OWNERSHIP.

IN answer to the inquiry of "A. B.," I presume that, as the furniture in question could not be said to be in "*the possession, order, or disposition*" of the bankrupt, the change of ownership would be sufficient to prevent the goods passing to the assignees.

This case is distinguishable from *Stephens v. Sole*, 1 Atk. 170, and others of a similar nature where the mortgagor is allowed to remain in possession.

LEX.

PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

UPWARDS of 30 Bills, effecting Alterations in the Law, received the Royal Assent within the last week. It may be convenient to present at one view the entire list of this Ten Months' Session, so far as the profession is

particularly interested. The Table, as well of Local and Personal, as of Public Acts, will be given in an early number.

Royal Assents.

20th December, 1847.

Extending Time for making Railways, 35
L. O. 204.

28th March, 1848.

Regulating the Queen's Prison, ib. 555.
North American Passengers, ib. 581.

13th April.

Oaths in Chancery, p. 7, *ante*.
Stamp Duties Assimilation, p. 8, *ante*.

22nd April.

Crown and Government Security, ib. 600.

5th May.

Trial of Controverted Elections, p. 23, *ante*.

9th June.

Annual Indemnity, p. 221, *ante*.
Removal of Aliens, p. 182, *ante*.
Insolvent Debtors, (India.)

22nd July.

Poor Removal, p. 298, *ante*.
Commons Inclosure, p. 324, *ante*.
Game Certificates, p. 341, *ante*.

25th July.

Suspension of the Habeas Corpus Act (Ireland), p. 280, *ante*.

14th August.

Ecclesiastical Districts.
Administration of Justice, (No. 1.)
Administration of Justice, (No. 2.)
Protection of Justices.
Administration of Criminal Justice.
Joint-Stock Companies.
Prisons Regulation.

31st August.

Public Health.
Ecclesiastical Jurisdiction.
Parliamentary Electors.
Criminal Law Administration.
Borough Incorporation.
Bankrupts Release.
Loan Societies.
Poor Law District Schools.
Parochial Debt and Audit.
Debts out of Real Estate.
Turnpike Acts Continuance.
Proclamation on Fines.
Petty Bag Office.
Insolvent Debtors' Court.
Stock in Trade Exemption.
Highway Rates.
London Small Debts.

4th September.

Controverted Elections.
Poor Removal, (No. 2.)
Poor Law Union Charges, (No. 2.)
Poor Law Auditors' Proceedings Restriction.
Commons Inclosure Act Amendment.

Commons Inclosure, (No. 2.)
Drainage Certificates.
Slave Trade.
Metropolitan Sewers.

5th September.

Slave Trade.
Local Acts.
City of London Sewers.

BILLS POSTPONED.

To the preceding account of Bills *passed*, we add the following List of Bills *postponed* in the respective Houses of Parliament, and accompany them with the names of the several proposers of the measures.

House of Lords.

Parliamentary Proceedings Adjournment.—Lord Stanley.
Charity Trusts' Regulation.—Lord Chancellor.
Copyhold Enfranchisement.—Lord Chancellor.
Bankruptcy Law Consolidation.—Lord Brougham.
Bankruptcy Court Regulation.—Lord Brougham.
Criminal Law Consolidation.—Lord Brougham.
Independence of Parliament.—Lord Brougham.
Declaratory Suits.—Lord Brougham.
Clergy Offences.—Bishop of London.
Amendment of Criminal Law.—Lord Campbell.

Unnecessary Actions Prevention.—Lord Campbell.

Bail by Coroners.—Lord Campbell.

House of Commons.

Chancery Fees.—Solicitor-General.
Chancery Offices.—Solicitor-General.
Remedies against the Hundred.—Sir Wm. Clay.

Assignment of Policies.—Mr. Fagan.

Bankruptcy and Insolvency Law Consolidation.—Mr. Bouverie.

Vacating Seats of Insolvent Members.—Mr. Moffatt.

Agricultural Tenant-right.—Mr. Pusey.

Exemption of Small Tenements.—Mr. Scrope.

Roman Catholic Relief.—Mr. Anstey.

Roman Catholic Trusts.—Mr. Anstey.

Appeal in Criminal Cases.—Mr. Ewart.

Poor Removal, England and Scotland.—Mr. Buller.

Corrupt Practices at Elections.—Lord John Russell.

Navigation Laws.—Lord J. Russell.

Imprisonment before Trial.—Lord Nugent.

Game Laws.—Mr. Bright.

Rights of Outgoing Tenants.—Mr. Crawford.

Extending Election Franchise.—Mr. Wyld.
Attorneys' Certificate Duty.—Lord R. Grosvenor.

Law of Marriage.—Hon. J. S. Wortley.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Re Lowe's Estate, In the matter of 1 W. 4, c. 60, and 4 & 5 W. 4, c. 23. Aug. 7 & 8, 1848.

VENDOR DYING, WITHOUT AN HEIR, BEFORE CONVEYANCE.

A vendor who dies without an heir, and before the conveyance of property agreed by him to be sold, is deemed a trustee within the meaning of 11 Geo. 4, and 1 W. 4, c. 60, and 4 & 5 W. 4, c. 23.

THE Solicitor-General (Sir John Romilly) said, that this was a petition praying the usual reference to the Master to inquire whether George Lowe, deceased, was a trustee within the meaning of 1 W. 4, c. 60, and 4 & 5 W. 4, c. 23, and to appoint a proper person to convey certain freehold property agreed by him to be sold. The petition had been presented by the administrator for the Crown of the goods, chattels, and credits of the said George Lowe, who had died without leaving an heir or any next of kin him surviving. The deceased had contracted to sell certain freehold property to the Hereford and Shrewsbury Railway Company, but had died before executing the conveyance. The Vice-Chancellor of England had declined to grant the prayer of the petition, upon the ground, that the case was not expressly provided for by 1 W. 4, c. 60. His Honour thought that he was precluded by the 18th section, which provides, that the act shall not extend to cases (amongst others) of a vendor, except in any case thereinbefore expressly provided for. It was, however, clear that the case came within the meaning of the provisions of 1 Wm. 4, c. 60, and 4 & 5 Wm. 4, c. 23, s. 4. There was, no doubt, that the deceased, having contracted to sell his estate, was in equity a trustee for the railway company. *Green v. Smith, 1 Atk. 572.*

Mr. Wray for the Crown.

The Lord Chancellor concurred with the view taken by the Solicitor-General.

Ordered as prayed.

Rolls Court.

Cocks v. Strange. August 5, 1848.

FOREIGN COPYRIGHT.—INJUNCTION.

The Court refused to interfere by injunction before trial to restrain the infringement of copyright in a work published simultaneously in England and on the Continent, although in two actions against other parties the right of the English assignee of the work in question had been sustained.

THIS was a motion for an injunction to restrain the publication of certain waltzes, called

the Elfin Waltzes, the copyright in which formed the subject of the actions of *Cocks v. Purday*, and *Cocks v. Lonsdale*. Mr. Cocks claimed as the assignee of Hoffman, who was himself assignee of Labitzky the composer. The piracy complained of was committed by the publication of the waltzes in a work called the Musical Bouquet.

Mr. Walpole and Mr. Campbell, in support of the motion, relied upon the verdicts obtained by Mr. Cocks in the two cases of *Cocks v. Purday* and *Cocks v. Lonsdale*, and the decisions of the Court of Common Pleas in his favour in those cases, as establishing a *prima facie* right in this instance to the copyright in the works in question, which would entitle him to the protection of the Court; and referred to letters of the solicitor of the present defendant, written before the decision in those cases had been obtained, to show that the defendant had then considered that his case must be governed by it. It would be a great hardship on the plaintiff, if he were repeatedly obliged to bring actions respecting this foreign copyright, when so many accidents might happen to prevent him from procuring on a later trial the witnesses (many of them foreigners) whose testimony had gained him the verdict in an earlier one.

Mr. Lloyd, for Mr. Strange, said, that the decision of the Courts of Law, in the cases referred to, had been obtained upon a special case, containing important admissions, which the present defendant was not prepared to make. He ought not, therefore, to be bound by the decision in them. *Saunders v. Smith, 3 M. & C. 711; Rundle v. Murray, Jac. 211.* These admissions were:—

1st, That the publication in England and abroad was simultaneous. 2ndly, That the assignment made to Hoffman was in writing. 3rdly, That there had been a regular sale of the work to Cocks. Now, although the publication in this case took place in both countries on the same day, it did not follow that it was absolutely contemporaneous. The publication might have taken place some hours earlier in Austria than in England, and, considering the difference of longitude, probably did so take place. Now the plaintiff's title rested on there being no previous publication abroad. *De Londre v. Shaw, 2 Sim. 237; Bentley v. Foster, 10 Sim. 329.* This circumstance alone had exempted him from the operation of the International Copyright Act, 7 & 8 Vict. c. 12, and fractions of a day would therefore be attended to, as in other cases, as acts of bankruptcy, where absolute priority was required. *Wydown's case, 14 Ves. 80; Ex parte Du Grene, 1 V. & B. 54.* Chief Baron Pollock, in *Boosey v. Purday, June, 1848*, (reported from the shorthand writers' notes by Mr. Elsworth,) had ex-

pressed himself of this opinion. Again the copyright claimed here must be an English copyright, and that could be only assigned in writing, (*Power v. Walker*, 3 M. & S. 7); but the present defendant did not admit that any such assignment had been made prior to the publication complained of. Further, when the parties in the cases of *Cocks v. Purday*, and *Cocks v. Lonsdale*, consented to turn the facts into a special case, it was on the supposition that the defendants would be able to obtain the opinion of a Court of Error upon the decision come to, which, however, they afterwards found to be a mistake. There was therefore the more reason for not holding that decision as binding. The balance of inconvenience was in favour of permitting the publication to continue.

Lord Langdale said, he had no doubt but that the question must be tried at law. The only point for him to consider was, what must be done in the mean time. The Court adopted different courses, according to the circumstances of each case. If the right was clear, or very probable, an injunction would be granted at once. If the right was doubtful, or the facts not clear, the Court would suspend the injunction till the right was ascertained, putting the defendant on terms. Now, in the cases of *Cocks v. Purday*, and *Cocks v. Lonsdale*, referred to by Mr. Walpole, the law was declared only on the circumstances as proved, which may not have included all the facts material to the determination of the legal question in dispute. He could not consider the defendant as bound by this declaration of the law. The law in these cases was applied to a new state of circumstances. He could not say what effect even a small variation in the circumstances might make in the views of the Court in regard to it. The plaintiff might certainly be put to a loss for which he might never obtain an adequate compensation, if the injunction were refused, because the price of the defendant's work was below that of the plaintiff's, as was natural under the circumstances; but on the other hand, the defendant might have his whole connexion destroyed, if he were now prohibited from selling this article, which it might ultimately appear that he was entitled to sell. Without saying that he would not interfere in the plaintiff's behalf, if the result of several actions should establish the presumption of his right in a new case; he should order the present motion to stand over till an action had been brought, the defendant keeping an account.

Vice-Chancellor of England.

Noel v. Jones. July 28, 1848.

LEGACY.—VESTING.—INTEREST.

A testatrix gave 800*l.*, "to be applied by her trustees on the education of F. N., it being her desire that the trustees, or the survivor, or the executors or administrators of the survivor, should follow all the reasonable suggestions of E. N., as to the school and

mode of learning in which F. N. should be educated." Held, that the 800*l.* was a vested legacy in F. N., and subject to the ordinary rules of legacies carrying interest in favour of the legatee from one year after the death of the testatrix.

MARIA MONTGOMERY, by her will, gave all her personal estate to trustees on trust, amongst other things "to pay and apply the sum of 800*l.* in and upon the education of Francis Noel, the son of E. H. Noel, her grandson, it being her desire that the said trustees, or the survivor of them, or the executors or administrators of such survivor, should follow all the reasonable suggestions of the said E. H. Noel, as to the school and mode of learning in which he should desire to have his son educated." It was admitted by the counsel on both sides that that this was a vested interest in F. Noel, but the question was, whether the legacy should carry interest in favour of F. Noel, at the end of a year from testatrix death as a general legacy, or whether it was to be construed as a legacy for a specific purpose to be paid in dribblets from time to time, and therefore carry no interest for the infant.

Mr. Malins urged, that it was a legacy with the ordinary incidents and carried interest. In order to postpone the payment of interest, there must be some definite period fixed for the payment of the legacy itself, and here there was none. The purposes for which the legacy was given were perfectly disregarded in law, it must be looked upon as a general legacy vested in interest immediately, and therefore carrying interest. He cited *Barlow v. Grant*, 1 Vern. 255; *Burton v. Cook*, 5 Ves. 461; *Woodmaston v. Walker*, 2 Russ. & Myl. 197.

Mr. Llofd and Mr. R. Palmer, contra. The time of payment and vesting are two different things. This legacy, though vested in interest, is postponed in payment until the necessity for payment arises. The trustees are directed to apply portions of it from time to time. When those portions are applied, then the different periods of payment will arise, and not before; it is vested therefore in point of interest, but payment is postponed from time to time, and as interest runs only from time of payment, no interest in favour of the legatee could run in the present instance. They cited *Sidney v. Vaughan*, 2 Br. P. Cases, 254; *Crickett v. Dolby*, 3 Ves. 10.

The Vice-Chancellor said, he was struck with the words in the will; the words were not words of gift, but a direction "to pay and apply 800*l.*, &c." The question was, whether by the form of gift there was an intention that there should be nothing but payments from time to time of such sums as should in the aggregate amount to 800*l.*, or whether there was an absolute legacy of 800*l.* vested immediately, but subject as to payment to the discretion of the trustees; and he was of opinion, that there was no particular intention on the part of the testatrix that the money should be paid in dribblets, and therefore he thought it fell within the general

rule as to legacies laid down by Lord Eldon, and he should order the 800*l.* as a matter of course to be paid into Court, and that interest at the rate of 4 per cent. should run upon it for a year after the death of the testatrix in favour of the legatee.

Vice-Chancellor Knight Bruce.

Clarke v. Bates. Saturday, Feb. 19, 1848.

ADMISSION OF ASSETS TO PAY LEGACY.

Executors who, by their answer to a bill filed for payment of a legacy and interest, admitted that they had paid another legacy, and accounted with the residuary legatee on the footing that no interest was payable on the legacies, Held, not thereby to have admitted assets.

THE bill was filed by Ann Clark against Bates and Lambert, the executors of the will of John Clark, for the payment of a legacy of 1,000*l.* and interest. The testator by his will, dated the 25th Nov. 1835, gave his freehold and copyhold estates, and all his personal estates, unto and to the use of his son John Clark, his heirs, executors, administrators, and assigns, for his own absolute benefit, but subject and charged as hereinafter mentioned. And the testator gave to his daughter Elizabeth Clark 1,000*l.*, and the plaintiff Ann Clark 1,000*l.*, to be paid to them respectively by his said son John Clark, on their respectively attaining their ages of 21 years, and he thereby charged all his real and personal estate so given to the said John Clark with the payment of the said legacies accordingly, and he appointed the said S. Bates and J. Lambert executors of his will, and they duly proved the same will on the 22nd of Aug. 1836, the testator having died on the 23rd of Feb. preceding. The plaintiff attained her age of 21 years on the first of April, 1847, and the executors shortly afterwards presented the plaintiff with an account as to the said legacy, whereby it appeared that 501*l.* 9*s.* 4*d.* had been paid for the maintenance and benefit of the plaintiff during her minority, and that there was a balance of 498*l.* 10*s.* 8*d.* due to the plaintiff, and that sum the executors tendered to her; but in such account no mention was made of interest on the legacy, and she declined to receive the principal. This suit was then instituted for an account of the principal and interest in respect of the said legacy, and praying that the defendants might either admit assets or that the usual accounts might be taken. The defendants by their answer said, that upon the said John Clark's attaining his age of 21 years, they accounted with him upon the footing of no interest being payable on the said legacies, and paid to him all that appeared to be due, they taking from a debtor to the estate a security for 600*l.*, which sum, together with other monies in their hands, would have been sufficient to discharge the principal of such two legacies. Upon Elizabeth Clark attaining her age of 21 years, her legacy was discharged by defendants, but no interest was paid to her.

Mr. Swanston and Mr. Malins contended, that the admission by the answer of assets was sufficient to entitle the plaintiff to an immediate decree for payment of the legacy and interest, without any accounts being directed: and that the admission by an executor of assets to pay one legacy was an admission of assets to pay all. They cited *Cook v. Martin*, 2 Atk. 2; *Drewry v. Thacker*, 3 Swan. 529; *The Philanthropic Society v. Hobson*, 2 M. & K. 357; *Barnard v. Pomfret*, 5 M. & Cr. 63; and *Rogers v. Soullton*, 2 Keen, 598.

Mr. Russell and Mr. F. G. T. White, were for the defendants.

His Honour said, that to say there was in the answer an admission of assets would be a needless severity of interpretation, productive of inconvenience and injustice. The defendants considered that the will did not give interest on the legacies, and on that assumption made their payments. The Court ought not to disbelieve that they had erroneously and innocently misconstrued the will in that respect; their acts were consistent with such a construction, and they paid the sum on that assumption, and not in an ordinary manner. That did not amount to an admission of assets upon the true construction of the will. The plaintiff was entitled to a decree for the legacy and interest at 4 per cent. from the death of the testator, and the executors will be allowed what they have paid for the benefit, maintenance, and otherwise.

Vice-Chancellor Wigram.

Barrett v. Buck. April 13, 1848.

COSTS.—THELLUSON ACT.

When an accumulation is directed by will from the proceeds of real estate, the heir of the testator is entitled to the income of the accumulated fund, from the period that the accumulation is void under the statute until the period of distribution arrives; and takes such income as personal estate. Semble, That the costs of suit will come out of the corpus and accumulation within the legal period as one fund rateably with the subsequent accumulations, as another fund.

Two questions arose in this cause, under the will of a testator who died more than 21 years ago, and by his will directed his real and personal estate to be sold, and the proceeds to be invested, and the income to be accumulated until the death of his two sons and two daughters, and the accumulated fund to be then divided among the issue of such children and of a deceased child *per stirpes*. One of his sons being yet alive, and 21 years having expired from the testator's decease, a suit was commenced for the administration of the estate. The personalty had been exhausted by the payment of debts. The first question was, who was entitled to the income of the accumulated fund from the expiration of the 21 years;

and secondly, out of what fund the costs of the suit were to be paid.

The Solicitor-General and G. Russell, for plaintiff.

F. Bailey for the personal representatives of testator's heir.

Kenyon Parker, Temple, Wray, Maule and Elderton, for other parties.

The first question was given up, it being conceded that the heir-at-law of the testator was entitled to the income of the fund from the expiration of the 21 years, as *personal estate*; and that it consequently vested in his personal representatives.

Upon the other question it was argued for the plaintiffs, upon the authority of *Elborne v. Good*, 14 Simon, 165, that the costs must come out of the corpus and valid accumulations, and the subsequent accumulations rateably.

For the personal representatives of the heir it was contended, that the costs of the suit should be paid out of the proceeds of the valid accumulation as the primary fund, upon what was contended to be the intention of the Lord Chancellor in *Eyre v. Marsden*, 4 Mylne & Craig, 231; it was argued, that in *Elborne v. Goode*, the Vice-Chancellor of England professed to follow *Eyre v. Marsden*, but decided in direct opposition to that case. He ordered the costs to be paid out of the corpus and valid accumulation, as one fund, and the subsequent accumulations, as another fund, rateably; but in *Eyre v. Marsden*, as appeared by the registrar's book, there was no apportionment of the general costs of the suit between the respective funds, but the general costs were directed to be paid out of the fund coming to the residuary legatees, *i. e.*, out of the corpus and the accumulations within the 21 years exclusively; and it was argued that this was what the Lord Chancellor intended appeared from his observations in *Christian v. Forster*, 2 Phill. 164. It was likewise contended, that in this case an additional reason existed for throwing the costs upon the corpus, in the fact, that it consisted entirely of the proceeds of *real estate*, and the corpus of real estate is applicable before the rents, which are applied only in the event of the corpus proving deficient.

The Solicitor-General observed, that the order in *Eyre v. Marsden*, as drawn up, was not in accordance with Lord Cottenham's judgment.

Temple remarked, that the minutes of Lord Cottenham's order were settled with great care by Mr. Treslove.

The Vice-Chancellor said, that he considered Lord Cottenham decided in *Eyre v. Marsden* as the Vice-Chancellor of England in *Elborne v. Good* supposed him to have done, and that the question of costs was rightly decided in *Elborne v. Good*. He should, however, make the same declaration in the present case that the Lord Chancellor made in *Eyre v. Marsden*, *i. e.*, that the costs were to be paid out of the general estate, including the valid accumulations; and he should leave it to the parties to work out that declaration.

Court of Common Pleas.

Corden v. The Universal Gaslight Company.
Trinity Term, 1848.

JUDGMENT AGAINST JOINT-STOCK COMPANY.—EXECUTION AGAINST SHAREHOLDER.—NOTICE UNDER 7 & 8 VICT. c. 110, s. 68.

A notice in the alternative under the provisions of the 7 & 8 Vict. c. 110, s. 68, of an intention to apply to the Court or a judge for a rule or summons for the issuing of execution against a former shareholder of a joint-stock company, is exhausted by the taking out of a summons before a judge at chambers, and does not warrant a subsequent original application to the full Court.

A RULE had been obtained, calling upon a former shareholder of the Universal Gaslight Company, to show cause why execution should not issue against him on a judgment obtained in an action against such company, under the provisions of the 7 & 8 Vict. c. 110, ss. 66 & 68.

Talfourd, Serjeant, showed cause, and objected to the sufficiency of the notice which had been given under the proviso in the 68th section. It recited the obtaining of the judgment against the company, and that the plaintiff had with due diligence, but unsuccessfully, endeavoured to obtain satisfaction of such judgment out of the property and effects of the company. It then next recited that the party now proceeded against, and seven other persons whose names were mentioned, "some or one of you were respectively shareholders or a shareholder in the said company at the time when the contract or engagement with the above-named plaintiff, for which the said judgment was obtained, was entered into, or became shareholders or a shareholder, during the time that the said contract remained unexecuted or unsatisfied, or were respectively shareholders or a shareholder at the time the said judgment was obtained," and then proceeded: "Now we do hereby give you notice that upon the expiration of 10 days from the date of the service of this notice upon you, some or one of you, or as soon after, &c. a motion will be made in her Majesty's Court of Common Pleas, or an application to one of the judges thereof, for a rule or summons, calling upon you, some or one of you, to show cause why execution should not issue against you, some or one of you, upon the same judgment, until the same shall be satisfied. Dated," &c. The first objection was that throughout the notice was in itself uncertain. It did not state the exact character in which the party was sought to be made liable, and it was uncertain against which of the parties named, and where it was intended to proceed. Consistently with its terms, one person might be proceeded against 10 days after service on another. [*Wilde, C. J.* The time, the place, and the person, to be proceeded against are all left uncertain.] A fur-

ther objection was, that it appeared upon an affidavit of the party proceeded against, that since the notice a summons had been taken out before a judge at chambers, and dismissed upon the hearing, the learned judge declining to make any order. The notice therefore was exhausted.

Phipson was heard in support of the rule.

Wilde, C. J. The last objection is decisive of the present application. The legislature has thought fit to require that before an application like the present, which is to have the effect of final judgment, can be made, the party sought to be charged shall have 10 days' notice, the party applying having the option of going be-

fore a judge at chambers. Here a notice has been given of an intention to apply either to the court or a judge, and the latter course having since been taken, and the matter dismissed by the judge, the party might reasonably suppose that the notice had performed its office, and could no longer be acted upon. I think the notice was exhausted, and therefore, as the present is an original application and not by way of appeal from the judge at chambers, it seems to me the present applicant has failed to show that he has given 10 days' notice of the motion now before the court.

Coltman, J., Maule, J., and Cresswell, J., concurred.—Rule discharged with costs.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PRINCIPLES of the COMMON LAW and GROUND^S of ACTION.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Law of Arbitration, p. 315.

Law of Property and Conveyancing, p. 370.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, pp. 169, 190.

Bankruptcy, p. 213.

Lunacy, p. 216.

Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.

Construction of Statutes, pp. 332, 351.]

ANNUITY.

Memorial.—*Consideration.*—The plaintiff had advanced to the defendant several sums, amounting to 5,000*l.*, less the sum of 250*l.*, which C., the agent of both parties, improperly retained without the authority or knowledge of the plaintiff; and C. received five bills of exchange accepted by the debtor, to the amount of 5,000*l.*, by way of security; the dates of the bills did not exactly correspond with the dates of the advances, nor were the advances in the exact sums for which the bills were given. The plaintiff accepted an annuity from the de-

pendant, in satisfaction of the bills and the 5,000*l.* secured thereby. The memorial under the title "Consideration, and how paid," was to this effect:—5,000*l.* made up of five several sums of 300*l.*, 200*l.*, 2,000*l.*, 1,500*l.*, and 1,000*l.*, previously lent and advanced by the plaintiff to or for the use of the defendant and *E. J. L.*, and owing to the plaintiff on security of five several bills of exchange drawn by *E. J. L.*, upon and accepted by the defendant, and indorsed by *E. J. L.*, the said consideration being paid or satisfied by the consideration of the said bills; and a release by the plaintiff of the defendant and *E. J. L.* from the sum secured thereby, and interest: *Held*, that the memorial, as required by the 55 G. 3, c. 141, was sufficient; for that it is not necessary, in the case of existing by-gone debts, to state when and how each sum constituting the debt was advanced. *Hall v. Lack*, 1 Exch. R. 300.

Case cited in the judgment: *Kelfe v. Ambrose*, 3 T. R. 551.

ASSUMPSIT.

Allegation of special damage.—In an action for assigning the lease and fixtures of certain premises pursuant to an agreement, the plaintiff alleged in his declaration "that he had been necessarily put to great expenses." The Court held that it was competent for the plaintiff under that allegation to give evidence of charges which he had become liable to pay to an attorney, and a value for work done in respect of the premises in question, although the charges were not paid at the time the action was commenced. *Richardson v. Chassen*, 34 L. Q. 383.

BILL OF EXCHANGE.

1. *Bankruptcy of drawer.*—*Estoppel.*—In an action by a *bond fide* indorsee, against the acceptor, of a bill of exchange, the defendant is estopped from pleading that the drawer and first indorser was an uncertificated bankrupt when the acceptance was given. *Braithwaite v. Gardiner*, 8 Q. B. 473.

Cases cited in the judgment: *Pitt v. Chappelow*, 8 M. & W. 616; *Kitchen v. Bartsch*, 7 East, 53.

2. *Indorsement.—Delivering.—Executor.*—*H.* indorsed a promissory note, but did not deliver it. After the death of *H.* his executor delivered the note to the plaintiff: *Held*, that the plaintiff had no title to sue on the note. *Bromage v. Lloyd*, 1 Exch. R. 32.

3. *Right of payee upon lost bill.*—The payee of a negotiable bill of exchange, having lost it, cannot, without producing it, maintain an action for the recovery of its amount against the acceptor upon its arriving at maturity. Drawer of bill of exchange payable to his own order v. acceptor. Plea, that after acceptance, and before action, plaintiff lost the bill, and that it still remains lost, and that plaintiff was not then, nor now is, the holder or possessor of it. *Replication*, that the bill had never been indorsed, nor was it transferable by delivery, or capable of being enforced or put in suit against defendant by any other person than plaintiff; that plaintiff, up to the commencement of the suit, was alone entitled to be the holder, and to receive the amount of it from defendant, of which defendant at the commencement of the suit had notice: *Held*, on demurrer to the replication, that defendant was entitled to judgment. *Ramus v. Crowe*, 1 Exch. R. 167.

Case cited in the judgment: *Hansard v. Robinson*, 7 B. & C. 90.

4. *Notice of dishonour.*—A declaration by indorsee against drawer of a bill of exchange, averred, by way of excuse for want of notice of dishonour, that *C. F.* accepted the bill for the accommodation of the defendant; and that at the time of making and accepting the said bill, and from thence until and at the time when the same was so presented for payment, *C. F.* had not any effects of the defendant, nor had he received any consideration for the acceptance or payment of the said bill, nor had the defendant sustained any damage by reason of his not having had notice of the non-payment thereof: *Held*, on motion in arrest of judgment, that it was not necessary that the declaration should deny that the drawer had any reasonable expectation when he drew, or during the currency of the bill, that he would have assets at the time of its maturity in the hands of the drawee.

The reasonable expectation of assets entitles to notice only on the ground that the drawer, under the circumstances which raise that expectation, may be damned; to allege, therefore, that he has sustained no damage, removes the ground on which the necessity of notice arises.

And there is no distinction in this respect between a bill of exchange and a banker's cheque. *Thomas v. Fenton*, 5 D. & L. 28.

Case cited in the judgment: *Kemble v. Mills*, 1 M. & W. 764.

BILL OF LADING.

See *Shipping*.

BURIAL FEES.

Ecclesiastical Court.—Upon a special case stated as to the right of the plaintiff, as rector of the parish of St. Marylebone, and minister of the new church of that parish, to recover certain fees alleged to be due for the burial of certain paupers in the new burial-ground of the parish, it appeared that, in 1733, the then minister or rector of the parish, and the parochial authorities, referred to a third person the settlement of the minister's fees, and a table was accordingly prepared by the referee.

From that time down to 1838, a fee of 1s. 6d. was paid by the parish officers to the minister or rector of the parish for the burial of a pauper in any of the cemeteries of the parish. By the stat. 51 G. 3, c. 151, (A. D. 1811,) the vestrymen of St. Marylebone were empowered to purchase land for erecting a new church and new chapels, and making a new burial-ground. By section 35, Dr. H., the then rector, and his successors, were declared to be ministers of the new church, and the patron of the living was empowered to appoint successively ministers of the new church, who were to enjoy such oblations, mortuaries, glebes, tithes, profits, and other ecclesiastical dues, as the present minister ought to have. Power was also given to the patron to appoint a minister to officiate in burying the dead in the new burial-ground, but no person was appointed in pursuance thereof. By section 49, the vestrymen were empowered to settle the rates and fees for burial in the new burial-ground, and to alter and amend the same. By section 50, they were prohibited from reducing the burial fees below the amount then payable for burials in the parish. By section 71, they were empowered to borrow 150,000*l.* on the credit of the rates and burial fees, and to assign any portion of such rates or fees to the persons advancing the money. In pursuance of the act, the vestry, in 1835, settled a table of fees, of which an item was,—“Paupers from the workhouse, 2s. 6d.,” and from that time the sum of 1s. 6d. has been paid to the rector, and 1s. to the clerk and sexton, on such burials. The burial service has not been performed by the rector or any of his curates, but by the reader of one of the new chapels.

Held, 1st, that upon this statement no fee was shown to be due to the plaintiff, either by custom or by virtue of the act of parliament; 2ndly, that, if such fee were due, it must be recovered in the Ecclesiastical Court. *Spry v. Gallop*, 16 M. & W. 716.

Cases cited in the judgment: *Andrews v. Cawthorne*, Dean of Exeter's case, 6 M. & W. 639; *Andrews v. Smith*, 3 Keb. 327.

CARRIER.

Non-delivery within reasonable time.—Damages.—The plaintiff sent certain goods by the defendants, carriers, to be delivered in Bedford on a Thursday, in order to be ready for the market on Saturday, but did not give notice that they were sent for that purpose; on that

day his clerk proceeded there; and owing to the non-delivery of the goods till the Monday following, he removed them to another place for sale: *Held*, in an action for the non-delivery of the goods within a reasonable time, that the expenses so incurred might be given by the jury as damages. *Black v. Bawendale*, 1 Exch. R. 410.

CHARTER-PARTY.

1. "*During the voyage*."—Plaintiff and defendants agreed by charter-party that a ship, then at Liverpool, of which the plaintiff was master, should, with all convenient speed, be made ready, and should at *L.*, receive and load from the charterers' agents a full cargo, and being so loaded, should proceed to Stettin and deliver the same, and so end the voyage, "restraints of princes, &c., during the said voyage, always mutually excepted;" and the ship was to be loaded at *L.* without detention; and defendants thereby agreed to load the vessel at *L.*, as in the charter-party stated, with the said cargo at *L.*

On general demurrer to a declaration in *assumpsit*, assigning for breach of the above agreement, that defendants did not load the ship at *L.* without detention, but detained her at *L.* an unreasonable time, (not negating restraints of princes, &c.): *Held*, that the exception as restraints of princes, &c. was applicable only after the ship quitted Liverpool. *Crow v. Falk*, 8 Q. B. 467.

2. *Time of vessel sailing*.—*Warranty*.—To an action for not loading a vessel in pursuance of the terms of a charter-party, the defendant pleaded, setting out the whole of the charter-party, which stated, that it was agreed between the plaintiff, "original charterer of the good ship or vessel called the *Dove*, A. 1, of the measurement of 149 tons, or thereabouts, now at sea, having sailed three weeks ago, or thereabouts," and the defendant, that the ship being tight, staunch, &c., should proceed to Marseilles, (after having delivered her cargo at Genoa,) and there load certain goods of the defendant, and therewith proceed to a safe port in the united kingdom, calling at Cork or Falmouth for a certain rate or freight; 30 working days to be allowed, Sundays excepted. The plea then averred, that time was an essential and material part of the contract; the probable situation of the vessel, with reference to the date of her sailing, and the object of her voyage, was also an essential and material part of the contract, and that, in point of fact, at the time of the making the charter-party, the vessel had not sailed three weeks, but a materially and unreasonably later time, of which the defendant had no notice or knowledge, for which cause the defendant neglected and refused to load the vessel; *Held*, that the time at which the vessel sailed was material, that that statement in the charter-party amounted to a warranty, and that the defendant was entitled to retain his verdict upon the plea, on motion for judgment *non obstante veredicto*. *Semble*, per *Parks, B.*, that the averment that the plaintiff knew the time

the vessel sailed was immaterial. *Ollive v. Booker*, 1 Exch. R. 416.

Case cited in the judgment: *Glahobm v. Hays*, 2 M. & G. 257; 2 Scott, N. R. 471.

CONSIDERATION.

Past cohabitation.—A woman declared in *assumpsit* against a man, averring that defendant had seduced and debauched plaintiff, and induced her to cohabit with him, whereby she had been injured in her character, and deprived of the means of procuring an honest livelihood; that the two had agreed to discontinue the immoral connexion and live apart: and that defendant, as a compensation for the injury, and in consideration of the premises, undertook to pay plaintiff a yearly sum towards her maintenance; which he had failed to do.

Held, a bad declaration, as disclosing no legal consideration for the undertaking. *Beaumont v. Reeve*, 8 Q. B. 483.

Cases cited in the judgment: *Binnington v. Wallis*, 4 B. & Ald. 650; *Jennings v. Brown*, 9 M. & W. 496; *Eastwood v. Kenyon*, 11 A. & E. 438; *Wennall v. Adney*, 3 B. & P. 249, note (a).

See *Annuity*.

CONTRACT.

Letters.—*Stamp*.—Where a contract is contained in letters, it is sufficient if one of the letters bear a 1l. 15s. stamp, although, on the part of one of the contracting parties, the letters are written and signed by an agent. *Grant v. Maddox*, 15 M. & W. 737.

CORPORATION.

Seal.—*Adoption of contract*.—If work be done for a corporation, for purposes connected with the corporation, under a verbal order, and accepted and adopted by them, they cannot, in an action to recover the price, object that no order was given under seal. *Sanders v. St. Neot's Union*, 8 Q. B. 810.

ELECTIVE FRANCHISE.

Refusal of vote at the poll.—*Returning officer*.—Where the returning officer at an election for a member of parliament, without any malicious motive and not wilfully, refused to receive the tendered vote of the plaintiff, whose name duly appeared on the register of voters, and who answered in the affirmative the questions directed to be put by act of parliament, but who really was not properly qualified to vote: *Held*, that the plaintiff could not maintain an action on the case against such returning officer for so refusing. *Price v. Belcher*, 35 L. O. 180.

GUARANTEE.

Forbearance.—A declaration stated, that *L.* made his promissory note payable to the plaintiff; that the note being in the plaintiff's hands over due and unpaid, in consideration that the plaintiff would forbear and give time to *L.* for payment of the note, to wit, for a reasonable time, the defendant promised to pay the note, in case *L.* should make default. It then alleged that *L.* made default, and that defendant

did not pay the amount of the note. Plea, *non assumpsit*. At the trial, it appeared that the defendant, having agreed to guarantee the payment of the note by L., indorsed on the back thereof as follows:—"I guarantee the payment of the within note by L., the maker, on the 2nd November next." On that day, the note being due and dishonoured, the defendant signed the following memorandum, addressed to the plaintiff:—"Sir,—I request you will hold over the promissory note in your favour, of L., dated 31st July, 1844, for 200*l.*, at 3 months, and in consideration of your so doing, I undertake to continue in all respect my guarantee of the same;" *Held*, that the guarantee was defective; also that there was no evidence to support the declaration.

Semble, that the declaration was bad, in stating the consideration to be forbearance to sue for a reasonable time. *Semple v. Pink*, 1 Exch. R. 74, S. C.; 34 L. O. 547.

IMPRISONMENT.

1. *Joint trespass.—Assessment of damage.*—Where two persons are jointly sued for false imprisonment, one of whom has acted from improper motives, the damages ought not to be assessed with reference to the act and motives of the most guilty, or the most innocent party, but the true criterion of damage is the whole injury which the plaintiff has sustained from the joint act of trespass. *Clark v. Newsum*, 1 Exch. R. 131.

2. *Refusing to discharge party committed for contempt.—Malice.*—The plaintiff was in custody under an attachment from the Court of Chancery, for non-payment of costs to a plaintiff in a suit in equity, the defendant in this action. After the costs were paid, the solicitor of the plaintiff in equity, (the now defendant,) refused to give an order to the sheriff to discharge the plaintiff, saying, "Let him go to Court to purge his contempt." The judge in equity discharged him on motion: *Held*, that no action was maintainable for refusing to give the order to the sheriff and thereby prolonging the plaintiff's imprisonment, except on proof of express malice. *Moore v. Gardner*, 16 M. & W. 595.

Cases cited in the judgment: *Hounsfeld v. Drury*, 11 A. & E. 98; *De Medina v. Grove*, 15 Law, J., Q. B. 284.

INDEMNITY BOND.

Bastard.—To an action of debt on a bastardy bond of indemnity, the defendant pleaded that the child was above the age of 19; that the defendant was willing and able to maintain the child; that when requested the plaintiffs refused to deliver the child into the care and custody of the defendant; and that the plaintiffs were damaged by their own voluntary act. Replication traversing the request of the defendant. Verdict for the defendant.

Held, on motion to enter judgment *non obstante veredicto*, that the facts disclosed in the plea afforded a good defence to the action, and showed that the expense sought to be recovered

was incurred by the voluntary act of the plaintiff. *Bowmes v. Marsh*, 34 L. O. 359.

INFANT.

1. *Ratification of promise.*—Any written instrument signed by the party, which, in the case of adults, would have amounted to the adoption of the act of a party acting as agent, will, in the case of an infant who has attained his majority, amount to a ratification. *Harris v. Wall*, 1 Exch. R. 122.

2. *Assumpsit*, by indorsee against indorser of a bill of exchange, with counts for money lent, &c. Plea, infancy. Replication, that the defendant, after he became of age, by memorandum in writing signed by him, ratified and confirmed the contracts and promises. Issue thereon. The defendant, after he became of age, wrote to the plaintiff the following letters: "I should feel particularly obliged if you would arrange to keep the bills back for a little time, as my late brother's executors have lost their mother and only sister lately, and which prevents them from settling with you. The money will be shortly paid, say 2,000*l.*" "The bills drawn out by Mr. B. and me, and my acceptances, one for 1,500*l.* and the other for 500*l.*, due on the 1st January last, will most likely be settled shortly, and would have been settled before, had not a sudden accident occurred, which prevented their being paid." "I beg to inform you that I have this day forwarded your letter to Messrs. H. I cannot tell you about the time when they will be settled, as I have not the money myself, and as I have told you before, I have left it entirely in their hands." "I received your letter yesterday, and am sorry to find that you are not contented with the letter I gave you when you were at my house, some short time ago. I have heard from the Messrs. H. yesterday, and they said they had written to Dublin, to arrange the whole thing. I therefore beg that you will immediately see and inform Mr. L., who I have heard from this day, of it. It is not a bit of use writing these sort of letters, as payment will not be made any the sooner for them. What I tell you is perfectly correct, and the matter will be settled shortly;" *Held*, that the letters were a ratification of the defendant's promise made during infancy. *Harris v. Wall*, 1 Exch. R. 122.

Cases cited in the judgment: *Cohen v. Armstrong*, 1 M. & Sel. 724; *Hartley v. Wharton*, 10 A. & E. 934.

INFERIOR COURTS.

Liability for trespass of plaintiff.—Where it is the required course of proceeding of an Inferior Court, on a verdict being found therein, for the judges of the Court to issue execution for the defendant in case of non-payment, and levy the amount, the fact of the plaintiff bringing his plaint in the Inferior Court, and not countermanding the execution, renders him liable in trespass for the seizure, unless he justify under the process of the Inferior Court. *Croomer v. Latham*, 16 M. & W. 713.

[The remainder of this Section will be given in our next Number.]

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 16, 1848.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

ADMINISTRATION OF JUSTICE BY MAGISTRATES OUT OF SESSIONS.

11 & 12 VICT. c. 42.

THE statutes carried through parliament by the Attorney-General, for facilitating the performance of the duties of justices of the peace out of Sessions, (11 & 12 Vict. cc. 42 & 43,) which come into operation on the 2nd October proximo, are framed upon a principle which cannot fail to secure general approval. The design appears to be to consolidate the law, and to comprise in one statute all the enactments with reference to the duties of a justice in respect to persons charged with indictable offences, whilst the second statute relates to the duties of justices with respect to summary convictions and orders. Forms are given in the schedule to the acts, but it appears to be intended that these forms should be altered and modified, so as to adapt them to the various circumstances which may arise,—a discretion the exercise of which, however convenient, will be attended with considerable responsibility, when undertaken by persons not familiar with the construction of legal documents. No doubt, many important questions of construction, as well as other obvious difficulties, must arise upon the provisions of these statutes, to the beneficial operation of which we should have looked forward more confidently, had a simple, speedy, and satisfactory mode been pointed out for the adjustment of such questions. It is no disparagement to the magistracy of the kingdom to say, that in

the performance of duties partaking of a judicial character, they should be subject to the supervision, and assisted by the legal knowledge and experience of the judges of the Superior Courts. In this respect the acts now under consideration appear to be defective. Some considerable time must necessarily elapse after these measures take effect before their practical merits can be fairly tested. It is to be hoped they will realise the intentions with which they were framed, and satisfy the expectations of that important and valuable body of men, whose direction and guidance is their more immediate object. To form an accurate estimate of the scope and bearing of these enactments, as well as of the precision, conciseness, and sufficiency of the several clauses, would require, not only an attentive perusal of the new statutes, but a familiar acquaintance with the provisions of the various acts which have been affected or repealed by the recent acts, and a comprehensive knowledge of the whole system which the present statutes are meant to supersede. In discussing a subject so extensive and complicated, a commentary upon detached portions would probably not be useful, nor altogether intelligible. We prefer, therefore, submitting, in the first instance, as copious a summary as our limits will allow, of the various clauses of these acts, the extent of which precludes their publication without abridgment, and reserving for a future period the remarks which the perusal suggests.

We commence with the Act “to facilitate the performance of the Duties of Justices of

the Peace out of Sessions, with respect to Persons charged with Indictable Offences," and which is cited as the 11 & 12 Vict. c. 42.

Sect. 1. enacts, That a justice of the peace may grant a warrant or summons to cause any person to be brought before him, where a charge or complaint is made, that such person "has committed or is suspected to have committed, any treason, felony, or indictable misdemeanor," within the limits of such justice; or where the offence is committed out of the jurisdiction, but the person guilty or suspected resides within such jurisdiction. The justice is empowered in all cases, if he shall think fit, to issue a summons instead of a warrant in the first instance; but if the summons be not obeyed, then a warrant may be issued.

Sect. 2. When an indictable offence is committed on the high seas, or beyond the seas, for which an indictment may be preferred in this kingdom, the person charged or suspected may be arrested under a warrant issued by a justice having jurisdiction where the offender or supposed offender resides or is.

Sect. 3. Where an indictment shall be found, against any person at large, the clerk of indictments, or clerk of the peace at sessions, upon application of or on behalf of the prosecutor and payment of 1s., if the accused shall not have appeared and pleaded, shall grant a certificate of such indictment having been found, and upon the production of such certificate, to any justice for the place in which the offence is alleged to be committed, or in which the accused resides or is, such justice may issue his warrant to apprehend such person, and upon his apprehension may commit him for trial or admit him to bail. If the person indicted be already in prison for another offence, the justice may order him to be detained until removed by writ of *habeas corpus* for the purpose of being tried upon the said indictment, or otherwise removed or discharged by due course of law.

Sect. 4 gives power to a justice to issue any warrant on a Sunday.

Sect. 5. Justices for adjoining counties, &c. may act as such for one county, &c. while residing in another, and all acts of such justices, &c. to be valid. Constables apprehending offenders in one such county may take them before such justice in the adjoining county if he act as a justice in both.

Sect. 6. Justices for a county may act for it in an adjoining city or place of exclusive jurisdiction, but this is not to give power to such justices to act in any matters arising within the place of exclusive jurisdiction.

Sect. 7 is intended for the removal of doubts as to the powers given to justices, in detached parts of counties, under the 2 & 3 Vict. c. 82.

Sect. 8 enacts, that when a charge or complaint is made of an indictable offence, if it be intended to issue a warrant, the information must be in writing and on oath; but where it

is intended to issue a summons instead of a warrant in the first instance, the information need not be in writing or on oath. It expressly provides that no objection shall be allowed to such information for any defect in substance or form, or for any variance between it and the evidence adduced before the justice.

Sect. 9 enacts, that upon such information or complaint being laid, the justice receiving the same may, if he think fit, issue a summons or warrant for the appearance of the person charged, either before him or any other justice for the same county. The summons is to be served by a constable or other peace officer, either personally, or at the last or most usual place of abode of the person to whom it is addressed, and if the party summoned do not attend, the justice may issue a warrant to compel attendance, and no objection is to be allowed to any such summons or warrant, for any defect in substance or form, or any variance between it and the evidence; but if the party charged shall appear to be misled by the variance, the justice may adjourn the hearing, and either remand the accused or admit him to bail.

Sect. 10 provides, that the warrant to apprehend parties shall be under the hand and seal of the justice, and that it may be directed to any constable or other person by name, and shall state shortly the offence on which it is founded, and name or otherwise describe the offender. The warrant may be executed within the jurisdiction of the justice issuing the same, or in case of fresh pursuit in the next adjoining county or place, within 7 miles of the border of such first-mentioned county, without having such warrant backed. No objection to be taken to the form or substance of such warrant, or as to variance, &c., as in the last preceding section.

Sect. 11 contains regulations as to the backing of warrants, so important that we copy the section verbatim:—"That if the person against whom any such warrant shall be issued as aforesaid shall not be found within the jurisdiction of the justice or justices by whom the same shall be issued, or if he shall escape, go into, reside, or be, or be supposed or suspected to be, in any place in England or Wales out of the jurisdiction of the justice issuing such warrant, it shall and may be lawful for any justice of the peace for the county or place into which such person shall so escape or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone being made on oath of the hand-writing of the justice issuing such warrant, to make an indorsement on such warrant, signed with his name, authorizing the execution of such warrant within the jurisdiction of the justice making such indorsement, and which indorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same in such other county or place,

and to carry the person against whom such warrant shall have issued, when apprehended, before the justice and justices of the peace who first issued the said warrant, or before some other justice or justices of the peace in and for the same county, riding, division, city, liberty, borough, or place, or before some justice or justices of the county, &c., where the offence in the said warrant mentioned appears therein to have been committed: Provided always, that if the prosecutor, or any of the witnesses upon the part of the prosecution, shall then be in the county or place where such person shall have been so apprehended, the constable or other person or persons who shall have so apprehended such person, may, if so directed by the justice backing such warrant, take and convey him before the justice who shall have so backed the said warrant, or before some other justice or justices of the same county or place; and the said justice or justices may thereupon take the examinations of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice or justices of the peace with an offence alleged to have been committed in another county or place than that in which such persons have been apprehended."

Sect. 12. English warrants may be backed in Ireland, and *vice versa*, in the event of parties escaping; and warrants so indorsed to be valid.

Sect. 13. English warrants may be backed in the Isles of Man, Guernsey, Jersey, Alderney, or Sark, and *vice versa*. Warrants so indorsed to be valid.

Sect. 14. English or Irish warrants may be backed in Scotland. Warrants so indorsed to be valid.

Sect. 15. Scotch warrants may be backed in England or Ireland. Warrants so indorsed to be valid.

Sect. 16. Power to justices to summon witnesses to attend and give evidence: if such summons not obeyed, a warrant may be issued to compel attendance, and in certain cases a warrant may be issued in the first instance. Persons appearing on summons and refusing to be examined may be committed.

Sect. 17 provides as to the examination of witnesses. The justices to administer an oath or affirmation, and the depositions of persons who have died or who are absent may, in certain cases, be read in evidence.

Sect. 18. After examination of the witnesses the justice is to read depositions taken against him to the accused, and caution him as to any statement he may make, and inform him that he has nothing to hope or fear from either promise or threat.

Sect. 19 declares, that the place where examination is taken is not to be deemed an open Court, and no person to remain without consent or permission of the justice.

Sect. 20 gives power to justice to bind over the prosecutors and witnesses by recognizances. Such recognizances, depositions, &c. to be

transmitted to the Court in which the trial is to be had, and witnesses refusing to enter into recognizances may be committed

Sect. 21 authorises the justices to remand the accused from time to time, not exceeding eight days, by warrant, or if the remand be for three days only by verbal order. It also provides, that parties accused may be admitted to bail on the examination being adjourned, and enacts that if the party so admitted to bail does not appear upon his recognizance, the justice may transmit the same to the clerk of the peace.

Sect. 22 provides, for the case of a person apprehended in one county on charge of an offence committed in another. Such person may be examined in the former county, and if evidence be deemed sufficient may be committed to prison. If the evidence be insufficient, the accused may be brought before some justice in the latter county; and a provision is made for the payment of the expenses of conveying the accused into the proper county.

Sect. 23 defines the power of a justice to admit to bail persons charged with felony and misdemeanors, either before or after commitment for trial. Where an accused person in custody is admitted to bail by a justice of the peace other than the committing justice, the recognizance is to be transmitted to the committing justice. No bail is to be taken in cases of treason but by order of a Secretary of State, or by the Court of Queen's Bench, or a judge thereof in vacation. The section also provides, as to the form of recognizance, in cases of misdemeanor where the defendant is entitled to traverse to the next Assizes or Sessions.

"Sect. 24 enacts, that when a justice admits to bail after commitment, he shall send a warrant of deliverance under hand or seal, to the keeper of the prison, who shall forthwith discharge the person so admitted to bail, if he be detained for no other offence.

Sect. 25 declares, that if after hearing all the evidence offered against the accused, the justice shall be of opinion that it is not sufficient to put such accused party on his trial for any indictable offence, he shall be discharged; but if the justice shall be of opinion that the evidence is sufficient to put the accused on his trial, he shall be committed by warrant for trial, or admitted to bail.

Sect. 26 contains regulations for conveying prisoners to gaol, and provides for the payment of costs incidental to such conveyance.

Sect. 27 provides, that at any time after the examinations have been completed, and before the first sitting of the Court at which the prisoner is to be tried, he shall be entitled to have copies of the depositions on which he has been committed or bailed, paying for the same not more than three-half-pence per folio.

Sect. 28 declares, that the forms in the schedule to this act contained, "or forms to the same or the like effect," shall be deemed valid.

Sect. 29 provides, that the metropolitan police magistrates, and stipendiary magistrates

in other places, may act alone; and that nothing shall alter or affect in any manner the powers and provisions contained in the acts 10 Geo. 4, c. 44; 2 & 3 Vict. c. 71; and 3 & 4 Vict. c. 84, respectively.

Sect. 30 provides, that the lord mayor or any alderman may act alone, and that this act shall not interfere with the provisions of the City of London Police Act, 2 & 3 Vict. c. 94.

Sect. 31 merely provides, that the chief magistrate at Bow Street may be a justice for Berkshire without qualification.

Sect. 32 declares, that the act is to extend to Berwick-upon-Tweed, but not to Scotland, Ireland, or the Isle of Man, Jersey or Guernsey, except the provisions as to backing of warrants.

Sect. 33 provides for the commencement of the act.

Sect. 34 repeals the whole or parts of the following acts: 13 Geo. 3, c. 31; 28 Geo. 3, c. 49; 44 Geo. 3, c. 92; 45 Geo. 3, c. 92; 54 Geo. 3, c. 186; 1 & 2 Geo. 4, c. 63; 3 Geo. 4, c. 46; 7 Geo. 4, c. 38; 7 Geo. 4, c. 64; 5 & 6 W. 4, c. 33, and 6 & 7 W. 4, c. 114.

"Sect. 36 provides, that this act may be amended or repealed."

The forms contained in the schedule to the act, and referred to in section 28, are marked alphabetically, and are thus described:—

- A. Form of information and complaint for an indictable offence.
- B. Warrant to apprehend a person charged with an indictable offence.
- C. Summons to a person charged with an indictable offence.
- D. Warrant where the summons is disobeyed.
- E. Warrant to apprehend a person charged with an indictable offence committed on the high seas or abroad.
- F. Certificate of indictment being found.
- G. Warrant to apprehend a person indicted.
- H. Warrant of commitment of a person indicted.
- I. Warrant to detain a person indicted who is already in custody for another offence.
- K. Indorsement in backing a warrant.
- L. (1.) Summons of a witness. L. (2.) Warrant where a witness has not obeyed a summons. L. (3.) Warrant for a witness in the first instance. L. (4.) Warrant of commitment of a witness for refusing to be sworn or to give evidence.
- M. Forms of depositions of witnesses.
- N. Form to precede the statement of the accused party.

O. (1.) Recognizance to prosecute or give evidence with condition. O. (2.) Notice of the said recognizance to be given to the prosecutor and his witnesses.

P. (1.) Commitment of witness for refusing to enter into the recognizance. P. (2.) Subsequent order to discharge the witness.

Q. (1.) Warrant remanding a prisoner. Q. (2.) Recognizance of bail instead of demand,

on an adjournment of Examination and condition. Q. (3.) Notice of such recognizance to be given to the accused and his sureties. Q. (4.) Certificate of non-appearance to be indorsed on the recognizance.

R. (1.) Warrant to convey the accused before a justice of the county, &c., in which the offence was committed. R. (2.) Order for payment of the constable's expenses.

S. (1.) Recognizance of bail, with condition in ordinary cases, and in cases where the defendant is entitled to a traverse. S. (2.) Notice of the said recognizance to be given to the accused and his bail. S. (3.) Certificate of consent to bail by the committing justice indorsed on the commitment. S. (4.) The like on a separate paper. S. (5.) Warrant of deliverance on bail being given for a prisoner already committed.

T. (1.) Warrant of commitment. T. (2.) Gaoler's receipt to the constable for the prisoner, and justice's order thereon for payment of the constable's expenses in executing the commitment, and receipt for the sum so ordered to be paid.

This abridgment will put the reader in possession of the nature and general effect of the provision of the statute, as well as the prescribed forms. An analysis of the provisions and forms contained in the schedule to the second act, (9 & 10 Vict. c. 43,) with respect to summary convictions and orders, will appear in our next publication.

BUSINESS AT THE JUDGES' CHAMBERS.

WE noticed last week the petition presented by Mr. Anstey to the House of Commons, and the communication from the Lord Chief Justice of the Common Pleas, read to the House by the Attorney-General, by which the public attention has been directed to the defective and unsatisfactory nature of the arrangements made for disposing of the business of the Common Law Courts during the Autumnal Vacation. It may be inferred from the statement of the Lord Chief Justice, that the chiefs of the three Courts of Common Law claim an exemption from the duty of attendance at chambers generally, although under special circumstances, and as matter of convenience, they have occasionally attended; and that the other judges, or some amongst them, do not admit that the Chief Justices and Chief Baron are entitled to such exemption, at all events, during the Long Vacation, when no other judicial duties are required from any of the judges.

Now that this question has been for the first time publicly mooted, it is quite right

it should be finally adjusted, as the changes introduced into the practice of the Courts of Law by modern acts of parliament, render it impossible that the judges' chambers should be closed, even for a single day, without producing some degree of inconvenience and injury to the interests of suitors. Although there is a suspension of pleading business between the 12th August and the 24th October, judgments may be signed and executions issued and executed during that interval, in reference to which proceedings the summary interposition of a judge is frequently required. The important and delicate duty with which the common law judges are entrusted, of ordering a writ of *habeas corpus* to issue when a defendant is supposed to be about to quit the kingdom, and of making orders to operate as charges upon stock, under the act 1 & 2 Vict. c. 110, and many other duties of scarcely less importance, which might be enumerated, also imperatively require the regular and unremitting attendance of a judge at chambers, as much in vacation as at any other period.

As regards the privilege claimed by the chief judges, it is right to observe, that the relative weight of the duties discharged by the chiefs and the puisne judges has been materially changed since the days of Lord Mansfield, Lord Ellenborough, and even Lord Tenterden. When these eminent men presided in the periods which followed the Terms, and were not passed on Circuit, the puisne judges had no regular judicial duties to discharge, and enjoyed considerable intervals of rest and relaxation, whilst the chiefs presided at the *Nisi Prius* Sittings in Middlesex and London. Under the altered system which now prevails, what between the Sittings in Banco after Term, Sittings in Error, attendance at the Old Bailey Sessions, continuous *Nisi Prius* Sittings during Term, and the enormous increase of chamber business in, as well as after, Term, the puisne judges are as fully employed and have as little leisure as the chiefs. Perhaps, under these circumstances, it is not to be wondered at that some of the puisne judges should conceive they were fairly entitled to call upon the chiefs to share the chamber business, during the only period of the year when there is a suspension of other active judicial duties:

We may add, that the considerate and temperate spirit evinced by the Lord Chief Justice in this matter, and which we have no doubt will be as fully appreciated by the profession and the public as it appears to

have been by the House of Commons, cannot fail to tend to the speedy and satisfactory adjustment of the question. The whole system, however, under which business is transacted at the judges' chambers has been a source of increasing dissatisfaction to those engaged in common law practice, and requires revision and amendment. The present discussion affords a favourable opportunity for entering upon the consideration of the subject; but it may be more conveniently discussed apart from the question which has accidentally arisen between the judges.

FEES AND EMOLUMENTS OF SOLICITORS.

MODE OF REMUNERATION.—AD VALOREM SCALE.

VARIOUS suggestions have been from time to time under the consideration of the profession, regarding the Fees and Emoluments of Solicitors, the amount of which has of late years undergone a very large reduction.

Objections have often been made to the remuneration for professional services, being in a great measure dependent upon the length of the documents and papers prepared by conveyancers, pleaders, and solicitors: It is admitted by the most urgent amongst the Law Reformers, that attorneys and solicitors are not, on the whole too highly remunerated; on the contrary, that they are not sufficiently rewarded for much of the professional skill and labour which they bestow, and for no inconsiderable part of which they receive no payment whatever.

The Real Property Commissioners, in their Report relating to the establishment of a General Register of Deeds, observed, that "The emoluments of the solicitors who conduct the business of conveyancing, depend, in a great measure, on the number and length of deeds and abstracts, and the multiplication of copies; for all which they are very liberally paid. All these it is one of the objects, and of the probable results, of a Register to abridge. There is, however, a considerable part of the duty of solicitors, requiring much skill and care, and imposing great responsibility, for which they are at present very inadequately remunerated."

"We think it for the public good, that solicitors should be liberally remunerated for their services, considering the confidence reposed in them, and the intelligence and skill required from them, it is desirable that

they should be men of education and of honourable feelings, and should occupy a respectable station. In our opinion it would be highly inexpedient that the rank which they hold in this country should be lowered.

“It will therefore be necessary to provide for the remuneration of solicitors in a different manner. Their fees for actual services should be higher than they are at present, and perhaps some mode of regulating them, which now exists only with respect to costs of actions and suits, might be beneficially introduced.”

And the present Master of the Rolls, upon a recent application to review the taxation of a solicitor's bill, observed that,—“If solicitors were always justly paid according to the real value of their services, it would be right to say that they should be entitled to payment only for that which has been of real service to their clients; but we all know that in practice, and according to old established rules of taxation, solicitors are sometimes very ill paid, and in some cases are not paid at all for very important services rendered by them to their clients. I should be glad to see such rules of practice established as would secure to them a sufficient remuneration for all real services, and exclude them from all payment for services pretended or merely nominal and not real. The discovery and establishment of such rules would be of great importance to both solicitors and clients, whose real interests are the same; but in the meantime, and while a solicitor is not entitled to any remuneration, or is allowed a very inadequate remuneration for real services, I should be slow to admit that he is to be deprived of any lawful fees which the established practice of the Court warrants, on the notion that the business charged for might have been of no practical benefit.” (*Lucas v. Lucas*, 8 Beav. 1.)

The question for consideration is, whether the members of the profession deem it right at present to accede to any alterations in the mode of determining the amount of that fair remuneration for their services, to which they are entitled, and which will enable them to maintain that station in society to which their rank and education entitle them, and in the maintenance of which the public are as much interested as themselves. The principal point to be aimed at seems to be the adjustment of rules which shall combine a consideration of the value of the property in litigation, with the extent of the skill and labour employed, and the responsibility incurred by the solicitor.

It has been suggested as highly desirable, that a rule should be established for the payment of a *per centage* on the property conveyed or mortgaged, and on the amount claimed or recovered in all suits and actions, in lieu of the present system of charge. The proposition appears to be surrounded with difficulties, but has been adopted, as we are told, to a certain extent in India, where a stamp is put upon the first process to show the amount sought to be recovered, and the same principle has been acted upon in Scotland, and it is said with advantage and general satisfaction. It is proposed that the per centage should vary according to the amount sought to be recovered.

It is urged in favour of the *ad valorem* principle, that suitors would much more readily submit to the risk of a certain per centage than be exposed to the possibility of having to pay as much as, or more than, the amount sought to be recovered. It is contended also, that were this rule established, legal proceedings would be largely increased, and that the present system operates frequently as a total denial of justice. It is also urged in support of these views, that the loss and inconvenience to which the profession at present is subjected from changes and alterations in the practice, would be considerably diminished, if not altogether removed, by the adoption of an *ad valorem* scale.

On this important subject we invite the suggestions of our readers, in order that a conclusion may be come to in accordance with the general opinions of the profession.

SALARIES OF THE COUNTY COURT JUDGES.

To the Editor of the Legal Observer.

SIR,—Having been invited some time ago to offer any observations on subjects of general interest to our profession, I take the liberty of observing, on the proposition set forth in one of the leading articles of your last week's publication, (regarding the salaries of the County Court Judges as settled by the late order in Council,) which questions the expediency of thus limiting them on the ground that great dissatisfaction has been created, and that it is hinted that some of the judges who are considered the most competent have intimated an intention of resigning. If they should do so, I have no doubt a sufficiency of equally competent men will readily be found to fill their situations. But the fact is, that (with some

few exceptions) the appointments under the County Courts' Act have not been such as to command the respect either of the legal profession or of the country at large. And I would ask, when almost every projected improvement or alteration in the law involves an attack on our branch of the profession,—when every change imposing additional trouble on offices usually held by solicitors, is invariably passed without any respect to their remuneration,—why are a selected set of lucky briefless barristers to be paid salaries double the amount of income they could ever earn by their own professional exertions? With the exception of a dozen of the 60 County Court Judges, there is not one to whom 1,000*l.* a year is not a complete godsend, which no professional income obtained by his own honest industry could ever have equalled.

According to the return made to the House of Commons, the average labour imposed upon the judges has been at the rate of 100 days per annum, at five or at the most six hours per day, and what is this to the labours of the well-employed advocate, or the attorney in fair practice. I for one highly approve of the decision and discrimination shown by the government in thus limiting the salaries of the County Court Judges, and in common with most of the members of our profession, I sincerely hope that no ill-humour on the part of the County Court officials, will induce the authorities to review that decision; and further, that some reduction will be made in the present Court Fees. It appears from the return before alluded to, that fees to the amount of 255,436*l.* 17*s.* 5*d.* have been paid for the recovery of 345,122*l.* 3*s.* 9*d.* I am aware that in the correspondence addressed to the Secretary of State on behalf of the County Court officials, an attempt is made to press into the service all sums that have been recovered under threat of County Court process, but the very attempt shows the weakness of their argument.

A MEMBER OF THE COMMITTEE OF THE
METROPOLITAN AND PROVINCIAL LAW
ASSOCIATION.

York, 5th Sept. 1848.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the present Session of Parlia-

ment, printed in this and the last volume of the *Legal Observer*, are as follow:—

- Extending Time for making Railways, 35 L. O. 204.
- Regulating the Queen's Prison, ib. 555.
- North American Passengers, ib. 581.
- Crown and Government Security, ib. 600.
- Oaths in Chancery, p. 7, *ante*.
- Stamp Duties Assimilation, p. 8, *ante*.
- Trial of Controverted Elections, p. 23, *ante*.
- Removal of Aliens, p. 182, *ante*.
- Annual Indemnity, p. 221, *ante*.
- Suspension of the Habeas Corpus Act (Ireland), p. 280, *ante*.
- Poor Removal, p. 298, *ante*.
- Commons Inclosure, p. 324, *ante*.
- Game Certificates, p. 341, *ante*.
- Joint-Stock Companies, p. 357.
- Administration of Justice by Magistrates, p. 397.

ADMINISTRATION OF CRIMINAL LAW.

10 & 11 VICT. c. 78.

An Act for the further Amendment of the Administration of the Criminal Law. [31st August, 1848.]

1. *Questions of law may be reserved at sessions of the peace for consideration of judges.*—Whereas it is expedient to provide a better mode than that now in use of deciding any difficult question at law which may arise in criminal trials in any Court of oyer and terminer and gaol delivery, and to make further amendments in the administration of the criminal law: Be it enacted, That when any person shall have been convicted of any treason, felony, or misdemeanor before any Court of Oyer and Terminer or gaol delivery, or Court of Quarter Sessions, the judge or commissioner, or justices of the peace before whom the case shall have been tried may, in his or their discretion, reserve any question of law which shall have arisen on the trial for the consideration of the justices of either Bench and Barons of the Exchequer; and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided, as he or they may think fit; and in either case the Court in its discretion shall commit the person convicted to prison, or shall take a recognizance of bail, with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear, at such time or times as the Court shall direct, and receive judgment, or to render himself in execution as the case may be.

2. *Questions reserved to be certified to the judges.*—That the judge or commissioner or Court of Quarter Sessions shall thereupon state, in a case signed in the manner now usual, the question or questions at law which shall have been so reserved, with the special circumstances upon which the same shall have arisen; and such case shall be transmitted to the said justices

and barons; and the said justices and barons shall thereupon have full power and authority to hear and finally determine the said question or questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisitions on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said justices and barons the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other session of oyer and terminer or gaol delivery, or other sessions of the peace, if no judgment shall have been before that time given, as they shall be advised or to make such other order as justice may require; and such judgment and order, if any, of the said justices and barons, shall be certified under the hand of the presiding chief justice or chief baron to the clerk of assize or his deputy, or to the clerk of the peace or his deputy, as the case may be, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of assize or his deputy, or the clerk of the peace or his deputy, as the case may be, in the form, as near as may be, or to the effect mentioned in the schedule annexed to this act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or gaoler in whose custody the person convicted shall be; and the said certificate shall be a sufficient warrant to such sheriff or gaoler, and to all other persons, for the execution of the judgment, as the same shall be so certified to have been affirmed or amended, and execution shall be thereupon executed on such judgment, and for the discharge of the person convicted from further imprisonment, if the judgment shall be reversed, avoided, or arrested, and in that case such sheriff or gaoler shall forthwith discharge him, and also the next Court of Oyer and Terminer and gaol delivery or sessions of the peace shall vacate the recognizance of bail, if any, and if the Court of Oyer and Terminer and gaol delivery or Court of Quarter Sessions shall be directed to give judgment, the said Court shall proceed to give judgment at the next session.

3. *Quorum of judges: their judgments to be delivered in open court.*—That the jurisdiction and authorities by this act given to the said justices of either bench, and barons of the Exchequer, shall and may be exercised by the said justices and barons, or five of them at the least, of whom the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of such chiefs at least, shall be part, being met in the Exchequer Chamber or other convenient place; and the judgment or judgments of the said justices and barons shall be delivered in open Court, after hearing counsel or the parties, in case the prosecutor or the person convicted shall think it fit that the case shall be argued, in

like manner as the judgments of the Superior Courts of common law at Westminster or Dublin, as the case may be, are now delivered.

4. *Case or certificate may be sent back for amendment.*—That the said justices and barons, when a case has been reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

5. *When judgment is reversed on writ of error, record may be remitted to court below for judgment.*—That whenever any writ of error shall be brought upon any judgment on any indictment, information, presentment, or inquisition, in any criminal case, and the Court of Error shall reverse the judgment, it shall be competent for such Court of Error either to pronounce the proper judgment or to remit the Record of the Court below, in order that such Court may pronounce the proper judgment upon such indictment, information, presentment, or inquisition.

6. *Penalty for forgery.*—That every person who shall forge or alter, or shall offer, utter, dispose of, put off, knowing the same to be forged or altered, any certificate of or copy certified by a chief justice, or any certificate of or copy certified by a clerk of assize or his deputy, or the clerk of the peace or his deputy, as the case may be, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of Court, to be transported beyond the seas for any term not exceeding 10 years, or be imprisoned for any term not exceeding three years, with or without hard labour and solitary confinement, both or either, at the discretion of the Court before which he shall be tried.

7. That this act shall not extend to Scotland.

8. That this act may be amended or repealed by any act to be passed during the present session of parliament.

SCHEDULE.

Whereas at the session of the peace for the county of _____ held on _____ before _____ and others their fellows, [or at the session of oyer and terminer and gaol delivery held for the county of _____ on _____ before, among others, Sir A. B. knight, one of the justices of the Court of _____ and _____ here name the quorum commissioners, justices of oyer and terminer and gaol delivery.] A. B., late of _____ labourer, having been found guilty of felony, and judgment thereupon given, that [state the substance], the Court before whom he was tried reserved a certain question of law for the consideration of the justices of either bench and the barons of the Exchequer, and execution was thereupon respited in the meantime:

This is to certify, that the said justices and barons having met in the Exchequer Chamber

at Westminster [or Dublin, as the case may be.] on the day of it was considered by the said justices and barons there that the judgment aforesaid should be annulled, and an entry made on the record, that the said A. B. ought not, in the judgment of the said justices and barons, to have been convicted of the felony aforesaid; and you are therefore hereby required forthwith to discharge the said A. B. from your custody.

To the gaoler of and the sheriff of and all others whom it may concern.

(Signed) E. F.

Clerk of the peace for the county of [or, clerk of assize for as the case may be].

NOTICES OF NEW BOOKS.

The Suitors' Instructor in the Practice of the County Courts: containing all the Information necessary for conducting or defending a Suit; the Fees payable on each Step; Definitions of the Legal Terms used in the Proceedings; an Abstract of the Act of Parliament; the Rules of Practice, &c., &c.; also a District Directory, giving the Names of all the Streets (and the Number of Houses in each Street) which form the Boundaries of the Metropolitan Districts, made from an actual Perambulation around each; and a List of the Country Districts. By a COUNTY COURT ASSISTANT CLERK. LONDON: Longmans & Co. Pp. 190.

THERE have been few alterations in the law which have produced so large a number of publications as the Small Debts' Act. Numerous expositors have arisen to render plain, if possible, all the clauses in the act, and the rules and forms which have been established for carrying it into effect. The publication before us is designed principally for the use of the suitor, though it may also aid the practitioner. It contains several statements, which are the more deserving of attention because they come from an officer of the Court, who is necessarily well acquainted with the working of the act, and who, holding an appointment in one of the Courts, may be supposed to possess a favourable inclination towards the principle of the measure, yet is compelled in candour to admit that in several respects the statute requires amendment.

The author, in compiling his work for the peculiar service of suitors acting without professional aid, has very properly noticed the several classes of cases in which that aid is absolutely necessary; and he has also justly

adverted to the inadequacy of the remuneration allowed under the act for professional advice and attendance.

"In ordinary cases, (he says,) such as matters of account, where the cause of action is small in amount, or the case not intricate, it is unnecessary to employ an attorney to conduct it. Besides this, the costs allowed for the services of an attorney are so small, as to be far from sufficient to remunerate respectable practitioners for their time and exertions in preparing and carrying a cause through a hearing; and consequently, the party employing an attorney will have to pay extra costs."

He observes, that the phraseology of the 91st section of the act which relates to the employment of an attorney or a barrister, and their reward, is very complicated. The following is the writer's analysis of its parts:—

"1. No person to be entitled to appear for any party, except an attorney or barrister.

"2. Or by the order of the judge, any other person may be allowed to appear instead of such party.

"3. But no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard, to argue any question as counsel for any other person.

"4. And no person, not an attorney, shall be entitled to recover any sum for acting on behalf of another person in the Court.

"5. And no attorney shall be entitled to have, or recover, therefore, any sum of money, unless the debt or damage claimed be more than forty shillings.

"6. Or to have, or recover more than 10s., unless the claim be above 5l.

"7. Or more than 15s. in any case;

"8. And in no case, a fee exceeding 1l. 3s. 6d. to a barrister.

"9. Neither a barrister nor an attorney to be allowed for plaintiff or defendant, where less than 5l. is recovered.

"10. Or, in the case of a defendant (he being successful) where less than 5l. is claimed, (in the plaint entered against him.)

"11. Or, in any case, unless by order of the judge.

"Now the preceding points thus divided and rendered into a more generally intelligible form, appear to be,—

"1. That an agent, who is not an attorney, cannot recover from his employer any remuneration for his services.

"4, 5, 6, 7. An attorney cannot recover from his client any reward, where the claim does not exceed 40s.; nor (a reward of) more than 10s., where the claim shall amount to more than 5l.; nor (a reward of) more than 15s. in any case.

"9. That in cases where less than 5l. is recovered, the defendant is not to be charged for the services that an attorney or barrister or both have rendered to the plaintiff;

"10. Or, supposing a defendant in a case

where 'less than 5*l.* is claimed' from him, employs an attorney, &c. and obtains judgment, no costs for an attorney, &c. is to be allowed to him.

"11. And in all cases the judge is to decide whether any allowance whatever shall be made or not.

"The divisions 4, 5, 6, 7, relate to a claim for remuneration due from employers to the persons by them employed; and the other divisions, 9, 10, 11, state what the successful party shall recover from the unsuccessful, provided the Court shall so order."

Should this analysis not be a correct one, our author asserts, that the section must be considered a chaos of legal jargon, at variance with itself, and utterly beyond an intelligible explanation. But enigmatical as the language of the clause is, it is evident, he says, that it was the intention of the framers to encourage suitors to conduct their own causes, and to leave the determination of them to the presiding judge. There are, however, he adds, cases in which it would be highly imprudent for a suitor, untaught in the study and practice of the law, to trust his own power, opposed, as he may be, by a skilful attorney on the other side.

"How could such a person take the needful steps, within the proper time, in an action of replevin, or interpleader? In the establishment, too, of a complicated account, or set-off, of special defences, and an action for tort, the services of an attorney would appear to be indispensable, and should be secured in the very earliest stage of the proceedings.

"With regard to the necessity or prudence of employing a barrister, the attorney conducting the plaintiff, or the defence, must decide; the suitor bearing in mind, however, that no barrister will attend a Court for a fee of 1*l.* 3*s.* 6*d.*; and that to instruct a barrister, a brief must be prepared by the attorney, which will be costs that the suitor must bring out of his own pocket, and not receive from that of his opponent."

Diversity of practice in the several Courts is nothing more than might have been anticipated. This is an evil inherent in the nature of such numerous and distant tribunals; but we were not prepared for the multiplicity of instances to which that diversity extends as well in the mode of conducting business as in the fees levied on the suitors. The author has rendered good service to the public by pointing out the very glaring examples afforded by several of the Courts within his personal knowledge.

"It is scarcely too much to say, that in no two of the Courts are the charges and business arrangements alike; and, while in some the scale of fees is rigidly adhered to, in others it

is most ingeniously departed from wherever possible, as the following instances will show:—The fee for calling the cause at the hearing being exacted on the entry of the plaint at one Court; a demand of the entire hearing fees charged on entering the plaint at another; hearing fees, and fees for issuing execution, charged much higher at one than at another, the clerks of both contending that they are charged according to the scale; an undue exaction of the search fee, &c., &c.

"The fee for searching the books, to ascertain if money has been paid into Court, has been complained of; but experience has shown, that if a charge was not made for searching, parties would be continually requiring searches, to the great hindrance of the other business in the ledger department of the clerk's office. The clerks of some of the Courts, have, however, so cleverly arranged the routine of the business of their offices, that in some cases two searches must be made and paid for where it was intended one should suffice. The following instance will prove the necessity of an alteration:—In a Court at one of the extremities of the metropolis, money is paid out only on Saturdays, (which, by-the-by, is the most inconvenient to a working man of all the six). A plaintiff visits the clerk's office, very possibly from the opposite end of the town, pays for a search, and finds that no money has been paid in. He asks for an execution against the defendant's goods, and, to his surprise, learns that executions are issued on Tuesdays only. On the following Tuesday he has again to travel over the same space of ground, very likely, five, six, or seven miles, and has to pay a search fee *de novo*. Thus, independently of having a second time, without the smallest necessity, to be absent from his business for several hours, he is mulct of a fee that has been already once paid.

"As then a general diversity, instead of uniformity, prevails, it is clear that some authority, more potential than has yet appeared, should interfere to prevent what is evidently an abuse; but, unfortunately, an abuse that is beyond the power of the public to control."

It has been objected, says the author, that the costs attending a trial in a County Court are too high, and that the promise of giving to the public "cheap law" has not been fulfilled.

"There are (he says) many traders who have resorted to the new Court that never had a suit in a Superior Court; and some are dissatisfied in having to pay 2*7s.* for a summons to recover 20*l.*, and dilate upon the loss they will sustain, should the debt and costs not be recovered from the debtor.

"But if these persons had been in the habit of suing in the Superior Courts, they would probably have had reason to know that for a

It was so in the case of the author's informant.

debt a little exceeding 2*l.*, the charge made by an attorney for a summons has been more than the expense of a County Court is for one for 20*l.*; and that when a 'declaration' in the higher Courts has been filed, and nothing further done, the costs have been much more than for the entire expense, including the hearing, in a County Court; and that for subpoenas and jury, and other interlocutory proceedings in the latter, the charges are infinitely smaller."

It is forgotten in these remarks that for one expensive action in the Superior Courts, hundreds were rendered unnecessary by the attorney's letter; and of the actions actually commenced not one in fifty proceeded to trial, even of those which, not exceeding 20*l.*, could be heard at comparatively small expense before the undersheriff.

It should also be recollected that the new County Courts have not merely absorbed all the small debt actions which found their way to Westminster, but the many thousand cases which previously belonged to Courts of Request. In these latter instances the office and Court fees are largely increased to the poor suitors, whether paid by plaintiffs or defendants. These cases used to be satisfactorily adjudicated in the Courts of Request by a practising attorney as the clerk, and a few of the inhabitants as the commissioners. In nine cases out of ten, the law is now *dearer*, instead of cheaper; and we question whether the learned judges, —serjeants-at-law, and Queen's counsel,—are better able than their predecessors to arrange the amount of the instalments, and the times of payment, which, for the most part, are the only subjects of consideration.

LAW ASSOCIATION FOR THE BENEFIT OF THE WIDOWS AND FAMILIES OF PROFESSIONAL MEN.

THE 31ST REPORT OF THE BOARD OF DIRECTORS TO THE ANNUAL GENERAL COURT.

15th May, 1848.

AUGUSTUS WARREN, Esq., *in the Chair.*

THE Directors, in making their Annual Statement, have to report that the income of the Association has, in the preceding year, amounted to 1,330*l.* 11*s.*; and from the increased interest which has been excited in favour of the institution, they cannot but hope for a continued addition to those resources which are so essential to its well-being.

The life subscriptions during the year have amounted to 124*l.* 16*s.*, which sum constitutes a portion of the balance in the hands of the treasurers, and must, in pursuance of the 59th law, be added to the capital stock.

The directors, in referring to the expenditure of the Association in the relief of those especially entitled to its assistance, have to report that the sum thus bestowed amounts to 889*l.* 3*s.* Although the members at large will, no doubt, unite with them in deeply lamenting the causes by which so heavy a demand on the pecuniary resources of the Association has been occasioned, they will, at the same time, congratulate themselves and the profession, that they have the power of bestowing so much good upon those who may, unfortunately, require their assistance.

During the year, two instances have occurred of petitions on behalf of gentlemen who have been members. One application has unfortunately come before the board on behalf of the family of a deceased member. His family, consisting of four daughters, was left almost entirely unprovided for, and the assistance rendered was most salutary and efficient.

In one case reported in last year's statement, the widow has married again, and has been placed in affluent circumstances, and being enabled to maintain her children, all further relief to her has been discontinued.

By the resolution of the General Court, in May last, the board was authorised to expend 200*l.* for the purpose of relief in cases not falling within the rules relating to the families of members, and in consequence of this permission, they have expended in this species of aid 158*l.* 10*s.*

In most of these cases, the directors have felt sincere gratification in having it in their power to afford permanent assistance, which, although trifling, has proved most useful; and they trust that the directors of the ensuing year will have the like discretion entrusted to them.

During the year 200*l.* stock have been purchased.

The directors have the gratification to announce that Mr. RICHARD HUNTER, already a life subscriber, has generously presented the society with the very handsome donation of 40*l.*

In conclusion, the directors desire to impress upon the minds of the supporters of the society, the most entire confidence in its continued prosperity: and the only reward they ask for their exertions in this work of charity, is an active zeal on the part of the members at large in promoting the interests of this truly benevolent institution.

The directors beg to add, that with the view to the promulgation and extension of the objects of the society, the board will be glad to receive from the members at large any suggestion calculated to produce either of those results.

The progress of time marks in too vivid certainty the increase of calls on its resources; and if their professional brethren would seriously consider the satisfaction which attends the power of administering to the necessities of those who have need, the directors are sure that there would be found, at once, a constraining motive for still further increasing the re-

sources of an institution like the present, whose object is, "to alleviate the misfortunes of domestic life, in cases where, by premature death, or the incapacity of a professional man, he or

his family might become destitute of the means of support."

(By order of the Board)

JOHN MURRAY, Secretary.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Attorney-General v. Corporation of Lichfield.
May 1, 2, 3, 1848.

INJUNCTION.—MUNICIPAL CORPORATIONS ACT.—BOROUGH RATE.—PAST EXPENSES.

The Court refused to interfere by injunction to prevent the levying under the Municipal Corporations' Act of a borough rate, expressed to be made for current expenses, but apparently intended to be applied in discharge of past expenses, or to restrain the application of the sums already levied for such purposes.

THIS was a motion for an injunction to restrain the corporation of Lichfield from enforcing the payment of a borough rate, upon the ground that they intended to apply the monies levied to purposes to which it could not legally be applied. The purposes complained of were, 1st, the payment of the arrears of certain annual sums, adjudged to be due from the corporation to certain charities in the town of Lichfield, and to a fund provided for the paving of the town; and 2ndly, the payment of legal expenses arising out of a claim made by a former town clerk for compensation, and an unsuccessful resistance made by the corporation thereto. The rate was levied under the municipal Corporation Act, 7 W. 4, and 1 Vict. c. 76, and the County Rate Act, 55 Geo. 3, c. 51, to which the Municipal Corporation Act refers. The rate professed to be made for current expenses. The information on which the motion was made, asked for the repayment to the borough fund of the monies alleged to have been improperly paid out of it, and that no further sums might be levied for the same objects.

Mr. Turner and Mr. Cole, for the motion, contended that by the Municipal Corporation Act, ss. 92 & 94, the income of the corporation was constituted into a fund called the borough fund, to which all sums raised by way of rate were only auxiliary, and which was not liable to the payment of any debt contracted after the act. It was the policy of the legislature to prevent corporations from throwing upon the rate-payers the burden of discharging expenses not included in the estimate upon which each rate was formed. If a corporation chose to incur such expenses, they must be met by the sale of part of the corporation estates. *Woods v. Reeds*, 2 M. & W. 777. Otherwise charges might be left unpaid for a long period, and then a most unreasonable burden be cast upon a generation of rate-payers who had never had any opportunity of checking the outlay. The corporation admitted in fact that they could

not make a rate for past expenses by making this rate in its form prospective. It therefore became impossible to raise the question at law. But the corporation became trustees of the fund in equity, and consequently this Court had jurisdiction to inquire into the application of the money raised. *Queen v. Recorder of Bath*, 9 Ad. & Ell. 871; *R. v. Justices of Flintshire*, 5 B. & A. 761; *R. v. Chapelwardens of Howarth*, 12 East, 586; *Curtis v. Waterworks Company*, 7 B. & C. 214, 814; *Attorney-General v. Aspinall*, 2 M. & C. 613; *Attorney-General v. Poole*, 4 M. & C. 7; *Attorney-General v. Compton*, 1 Y. & C., C. C., 417; *Attorney-General v. Wilson*, 9 Sim. 30, Cr. & Ph. 1; *Attorney-General v. Heelis*, 2 S. & Stu. 67; *Frcwen v. Lewis*, 4 M. & C. 249. The rate was in form a rate upon the parish, to be raised out of the poor-rates, therefore the rate-payers could not try its validity by action, supposing the poor-rate to be legally proper, and the remedy by *certiorari* was taken away by the Municipal Corporation Act, s. 132. *R. v. Justices of York*, 1 Jur. 867. So that the rate-payer would be without remedy, unless this Court should interfere.

Mr. Roupell and Mr. Greene, for the corporation, contended that the two parts of the application made by the information destroyed each other. If the rate was legal, there could be no fund on which the jurisdiction of the Court could attach. If it was void, the sum raised should be re-distributed among those who had paid it,—not carried to the general account of the borough fund, for the benefit of the present rate-payers, who might be very different persons. But, irrespectively of this circumstance, the proper remedy, if there was any wrong, was at law. There was a general power to remove any order into the Court of Queen's Bench by *certiorari*, independently of the Municipal Corporation Act, under the 7 W. 4, c. 78, s. 44; and although no one but the public officer authorised to make the poor-rate could appeal against a borough rate, any individual might resist the payment of a sum exacted from him by distress, and that action might be removed by *certiorari*. *Cobb v. Errand*, L. J. xvi., 397; *Queen v. Corporation of Lichfield*, L. J. xvii., 338. Even assuming the jurisdiction of the Court to interfere, there was no ground for its doing so. The borough rate was by the act made part of the borough fund. The act allowed the interest of debts unredeemed to be paid out of that fund. How then could the Court say, before the hearing, that the payments now disputed were a breach of trust? Great inconvenience would arise from

adopting the construction contended for by the other side. For instance, how could the corporation determine beforehand what sum might become due for costs in a chancery suit in the course of the year, or what sum a party whose right to compensation they disputed might be adjudged to be entitled to receive in respect of it? Many corporations had no property, and therefore could not discharge such liabilities in the mode suggested; and those which had must soon be deprived of their property by such a process.

They referred to the cases of *Attorney-General v. Wilson*, 9 Sim. 30; *Attorney-General v. Mayor of Norwich*, 2 M. & C. 406; *Attorney-General v. Corporation of Harwich*, 1 Keen. 700; *Attorney-General v. Corporation of Dublin*, 1 Dru. & Warren, 546; 9 Bli. 396; *Attorney-General v. Corporation of Liverpool*, 9 Bli. 396, 1 M. & C. 171; *Attorney-General v. Corporation of Leicester*, 7 Beav. 76.

Mr. Parsons, who appeared for the town clerk and the present treasurer of the corporation, and Mr. Daniel, who appeared for the mayor and three members of the council who had signed orders for the payments complained of, took the same line of argument, in opposition to the motion.

Lord Langdale, in the course of the argument, expressed an opinion that the question would be more properly tried at law; and ultimately, after taking time to consider his judgment, refused the injunction.

Vice-Chancellor of England.

Attorney-General v. Mansell. July 14, 1848.

DEATH.—EVIDENCE.

Where a party to a suit died abroad, an entry in the books of a foreign cemetery in the following terms:—"May, 5th, 1847. No. 1748. Permit for J. M., aged 83, in W. Richards' lots, Nos. 58 and 59, sec. 1," accompanied with an affidavit of the correctness of the entry, and of the identity of J. M.: Held, sufficient evidence of the death of J. M.

ONE of the parties to a suit died in the year 1847, in Philadelphia, and the following evidence of his death was produced: an entry in the books of the Laurel Hill Cemetery, in Philadelphia, in these terms:—"May 5, 1847. No. 1748. Permit for J. Mansell, aged 83, in W. Richards' lots, Nos. 58 & 59, sec. 1." There was also an affidavit of the correctness of this entry, and an affidavit identifying John Mansell with the individual in the suit.

Mr. Metcalfe contended that this evidence was sufficient.

The Vice-Chancellor said he was of the same opinion.

Vice-Chancellor Wigram.

Newton v. Askew. July 5 & 6, 1848.

PRIVILEGE FROM ARREST.

A party to a suit is privileged from arrest when attending the Registrar on the settling of minutes; and a Vice-Chancellor may entertain the application for his discharge, although the suit be at the Rolls.

MR. NEWTON, who was a defendant in this cause, as well as husband of one of the plaintiffs, was taken under an attachment for the costs of an interlocutory proceeding, when returning from the Registrar's Office, where he had attended, under the usual summons to settle the minutes of the decree pronounced by the Master of the Rolls in the cause. The Rolls Court not being sitting, the defendant, Newton, applied to the Vice-Chancellor for a *habeas corpus*, with a view to his discharge, upon the ground that he was privileged from arrest whilst attending the Court, or one of its officers, in the progress of the suit to which he was a party. The *habeas* was issued; upon its return, which was to the effect, that the defendant was taken in execution upon an attachment for the non-payment of costs in a particular cause. The Vice-Chancellor doubted, whether he had jurisdiction in the case, the cause having been heard at the Rolls, and the act of parliament and general orders made thereunder, prohibiting one judge of an inferior jurisdiction from altering or reversing or (except in certain cases) making orders in a cause depending in another branch of the same Court; and declined discharging the defendant without the sanction of the Chancellor. The case having been mentioned to the Lord Chancellor, he directed the application to be heard before the Vice-Chancellor who had caused the writ of *habeas* to issue.

Newton, in person, supported his immediate discharge. He contended, that the Registrar's Office must, for certain judicial purposes, be considered the Court; and a party attending there entitled to the same privilege from arrest as when attending the Court; that settling the minutes of a decree was a judicial proceeding; and that, as a defendant in the suit, he was entitled to attend such settling.

Kenyon Parker and Hall contended, that the privilege claimed extended only to judicial, and not to ministerial, proceedings in a suit. That settling the minutes of a decree was simply ministerial, and the attendance of a suitor upon the registrar was not necessary, who could settle the minutes of a decree in the absence of the parties; and that in the present case the defendant was represented by a solicitor on the record, who attended the registrar, and the defendant could not therefore also claim a right to attend.

The Vice-Chancellor said, he considered Mr. Newton was entitled to his discharge. It was admitted that in attending this Court upon the hearing of a cause, or upon any interlocutory proceeding, or in attending before the Master, a party was privileged from arrest; it was contended that he was not so privileged in attending the Registrar's Office,—not that the Registrar did not require the attendance of any party in the cause, but because the party was, or might be, sufficiently represented by his solicitor; but so he might be also before the Court or the Master. The Court so far acknowledged the necessity of having the due preparation of the decree watched by the parties, that in practice three notices were required to be served upon the parties before the

decree was passed in their absence; if, having such notice, the parties did not attend, the decree was then passed *ex parte*. The registrars could not deviate from the order made by the Court, yet the practice was, that the decree should not be drawn up by the registrar, without giving the parties the opportunity of seeing that it was in fact the decree which the Court had pronounced. He could not see why, if the solicitor did not attend for this purpose, or if he did, and for any other reason a party thought it necessary to attend the registrar, he was not at liberty to do so. Mr. Newton, in the present case, had a direct interest in seeing that the minutes were properly framed. He must be discharged from custody forthwith.

The costs, for the non-payment of which Mr. Newton was attached, were under 20*l.*, and Mr. Newton contended that, under 7 & 8 Vict. c. 96, he could not be arrested for a debt under that sum. Upon this point the Vice-Chancellor expressed no opinion. Mr. Newton was set at liberty.

Court of Exchequer.

Salkeld v. Johnson. Easter Term, 1848.

TITHES.—PRESCRIPTION.

On such parts of lands bearing titheable matters on which no tithe nor money have been paid during two incumbencies and three years of a third, there is a total exemption from all tithes. But as to other parts on which some tithes have been paid and other tithes withheld, there is no exemption for those that have not been paid,

The questions in this case from the Court of Chancery to the Court of Exchequer, were in the following form:—

First, Whether under the statute of the 2 & 3 Wm. 4, c. 100, a valid and indefeasible prescription or claim of exemption from or discharge of tithes can be maintained for certain lands which have never paid tithe of any kind, or anything in lieu thereof for the statutory period of two incumbencies, and three years of a third, making together no less than 60 years, though during such period titheable matters and things, the tithes whereof are demanded by the bill, and other titheable matters grew and arose at various times.

Secondly, Whether a valid and indefeasible prescription or claim of exemption from, or discharge of, the tithes of a particular titheable

matter be can maintained under that statute, when no tithe of such matter or any thing in lieu thereof has been paid for the statutory period, although at various times during that period such titheable matters have been grown on particular lands, and the tithes of all other titheable matters grown on the said lands, have been during that period from time to time rendered.

The certificate of the opinion of the Court returned to these questions on the 12th May, signed by Chief Baron Pollock, and Barons Parke, Alderson, and Platt, is as follows:—

“This case has been argued before us by counsel, and we have considered it, and the alterations made therein (by consent) having made it necessary to divide the question into two parts; we certify to your lordship our opinion on each part as follows:

“1st, We are of opinion, that as to those parts of the lands in question, whereof no tithe of any kind, nor any money or other matter in lieu thereof, have or has been paid, or rendered during the period above-mentioned according to the true construction of the said statute, a valid and indefeasible prescription or claim of exemption from a discharge of all tithes, can be maintained under the circumstances hereinbefore-mentioned, provided all the tithes of all the titheable matters from time to time growing on the said parts of the said lands be shown to have been, during the whole of the said period, withheld adversely, and under a claim as of right acquiesced in by the tithe-owner.

“2ndly, As to the other parts of the lands in question, whereof no tithes of the particular titheable matters and things, the tithes whereof are demanded by the plaintiff’s bill, nor any money or other matter in lieu thereof has or have been paid or rendered during the periods above mentioned, although at various times during such periods such titheable matters and things grew and arose upon such last-mentioned lands, other titheable matters and things having also at various times during the same periods, including corn, grain, and hay, grown and risen thereon, and the tithes of all such last-mentioned titheable matters and things having been from time to time duly paid and rendered, “We are of opinion, that no valid and indefeasible prescription or claim of exemption from or discharge of the tithes demanded by the plaintiff’s bill, can be sustained under the circumstances above stated, according to the true construction of the said statute.”

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PRINCIPLES of the COMMON LAW and GROUND^S of ACTION.

[Concluded from p. 396.]

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Law of Arbitration, p. 315.

Courts of Equity.

Construction of Statutes, p. 58.

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- Principles of Equity, p. 103.
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Bankruptcy, p. 213.
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 Courts of Common Law :
 Evidence, p. 272.
 Magistrates' and Poor Law Cases, p. 289.
 Construction of Statutes, pp. 332, 351.
 Law of Property and Conveyancing, p. 370.
 Principles of the Common Law and Grounds of Action, p. 393.]

INSURANCE, MARINE.

1. *Deviation from voyage insured.*—Assumpsit on a policy of insurance on goods, at and from Liverpool to Lintin, Hong Kong, Macao, Canton, &c., or all or any other port or ports, place or places, in China, the East Indies, and the Indian and China seas, the Gulph of Siam, or seas adjacent, particularly Manilla and Singapore, backwards and forwards, &c., with leave to trans-ship or reship the goods on board the same or any other vessel or vessels, and from such other vessel, &c., to any other vessel, &c., at or off Singapore, Manilla, Macao, &c., or elsewhere in the Canton river, or on the coast of China, or in the China seas, or Gulph of Siam, or seas adjacent, for Canton, Manilla, Singapore, or any other of the ports or places aforesaid, and with leave for the ship named, or any other vessel, &c., on board which the goods might have been trans-shipped, to proceed from any port, &c., in China, the China seas, or seas adjacent, particularly the before-mentioned places, to any other ports or places in China, the East Indies, or the Indian or China seas or seas adjacent, and discharge the goods at any or all of the said places, or remain at the same until it should be deemed expedient to proceed to the port or place of discharge: continuing the risk by land and by water until the goods should be arrived at their final port of destination, and including all risk of boats, &c., and of trans-shipment as above-mentioned. Premium five guineas, to return 50s. per cent. if the vessel discharged at Manilla direct, or at a port in China in the usual course, the port being open; or 60s. per cent. if she discharged at Singapore direct. The count alleged a loss by perils of the seas before the goods were landed at their final place of destination.

Plea, That the ship arrived at Hong Kong, on the coast of China, and that, while she lay there, by reason that she could not safely proceed to any usual port or place of discharge in China, it was agreed by the agents of the assured that the goods should be finally discharged at Hong Kong, and thereupon they were by the said agents discharged out of the said ship into another ship, being a receiving ship appointed by them as a warehouse for

receiving and storing the said goods: that Hong Kong, then and before the alleged loss, became the final place of destination, and the goods, before such loss, were finally discharged and safely landed at such place of destination.

Replication: That the goods were not, before the loss, discharged and safely landed at their final place of destination, in manner and form, &c. Issue thereon.

It appeared in evidence that the ship (named the Penang) sailed on the voyage insured, and met with a storm which damaged the ship and goods, not however rendering the ship unseaworthy. She arrived at Macao in June, 1841. There was no market for goods at Macao. Hostilities had taken place (but without formal declaration of war) between the Chinese and the English, who, in May, had stormed Canton. Before the Penang arrived, hostilities had been suspended; but peace was not finally established till August 1842. The English naval commander on the Canton station did not prohibit British ships from going to Canton, at their own risk; but the Chinese were so much exasperated against the English, that the consignees at Macao of the goods on board the Penang deemed it unsafe for her to go to Canton; and they chartered another ship for three months, to accompany the Penang to Hong Kong, (four miles from Macao,) in order that the goods might be trans-shipped and examined, and might be in a place of safety till they could be sent to Canton or some other market when circumstances should permit. Hong Kong was considered a safe place for this purpose; Macao not. There was no market at Hong Kong. The consignees did not intend either to reship the goods on board the Penang, or to make Hong Kong the place of deposit for sale. The goods, after being trans-shipped, were lost on board the 2nd ship by perils of the sea.

On a special case, empowering the Court to draw such inferences as a jury might: Held, that (assuming that question to arise on the pleadings) Canton was not such a hostile port as, in point of law, could not be considered a possible place of final destination: that, at the time of the trans-shipment, other places, in China and elsewhere, might have become the place of final destination within the intention of the policy; and that the place, stating Hong Kong to have become, before the loss, the final place of destination, was not borne out.

In *assumpsit* on another policy upon goods by the Penang, lost at the same time by the same perils, the policy reserving no liberty to trans-ship, but in other respects (so far as is material here) resembling the former, the defendants pleaded, that after the sailing, &c., the goods were, by the agent of the assured, without any cause rendering it necessary, and without defendant's consent, removed from on board the Penang, and placed on board another ship, and were continued till the loss happened. In replication *de injurid*, and special case setting forth the facts above stated, with liberty to the Court to draw such inferences as a jury might

Held, that the facts showed a departure from the voyage insured against, and that the plaintiffs could not recover. *Oliverson v. Brightman*, 8 Q. B. 781; *Bold v. Rotheram*, 8 Q. B. 797.

2. **Deviation**.—Insurance on ship at and from Liverpool, to ports and places in China and Manilla, all or any, during the ship's stay there, for any purposes, and from thence to her port or ports of calling and discharge in the United Kingdom, with liberty to call and stay at all or any ports or places on either side of, and at the Cape of Good Hope. The ship sailed from Liverpool direct to a port in China, having on board a cargo for that port and Manilla; from thence she proceeded to Manilla, and there discharged the remainder of her outward cargo. At Manilla, the captain took on board on freight 230 chests of opium, for Tongkoo, another port in China, (not being thereby a tenth part laden,) and sailed for Tongkoo, there to freight for the United Kingdom, and on her voyage thither was lost by perils of the seas. Tongkoo is quite out of the direct course from Manilla to the United Kingdom. **Held**, on error in the Exchequer Chamber, (affirming the judgment of the Court of Exchequer,) that the words "from thence," in the policy, meant, not "from Manilla" only, but from "ports or places in China and Manilla, all or any;" and that the sailing from Manilla to Tongkoo for the purpose of seeking a homeward cargo was not a deviation. *Pratt v. Ashley*, 1 Exch. R. 257.

3. Insurance on ship, at and from Liverpool to ports and places in China and Manilla, all or any, during the ship's stay there for any purposes, and from thence to her port or ports of calling and discharge in the United Kingdom, with liberty to call and stay at all or any ports or places on either side of and at the Cape of Good Hope. The ship sailed from Liverpool direct to a port in China, having on board a cargo for that port and Manilla; from thence she proceeded to Manilla, and there discharged the remainder of her outward cargo. At Manilla, the captain took on board, on freight, 230 chests of opium for Tongkoo, another port in China, (not being thereby a tenth part laden,) and sailed for Tongkoo, there to seek a freight for the United Kingdom, and on her voyage thither was lost by the perils of the seas. Tongkoo is quite out of the direct course from Manilla to the United Kingdom: **Held**, that the words, "from thence," in the policy, meant not "from Manilla" only, but "from ports or places in China and Manilla, all or any;" and that the sailing from Manilla to Tongkoo, for the purpose of seeking a homeward cargo, was not a deviation. *Ashley v. Pratt*, 16 M. & W. 471.

Cases cited in the judgment: *Metcalf v. Parry*, 8 Campb. 124; *Solly v. Whitmore*, 5 B. & Ald. 45; *Laroche v. Oswin*, 12 East, 131.

LIBEL.

Publication.—**Authority**.—Indictment for causing to be published in a newspaper a libel on K. The libel told a story of K., and added

comments on the story, giving it a ridiculous character. The editor of the paper deposed, that defendant asked him to show K. up, and communicated the story, which the editor told to a reporter for the paper; and that this story was substantially what was published; that, before the publication appeared, defendant remarked on the delay; and that, after the article came out, defendant expressed approbation of it.

Held, that, on this evidence, a jury might find that the defendant authorised the publication of the particular libel, notwithstanding the comments added, and although it appeared that the editor had heard the story before defendant told it to him. *Reg. v. Cooper*, 8 Q. B. 533.

See *Slander*.

MALICIOUS PROSECUTION.

Perjury.—**Probable cause**.—**Several assignments**.—In an action for malicious prosecution for perjury, when the indictment contains two assignments of perjury, if the plaintiff, at the trial of the action, confine his case to one of the assignments, the defendant is not entitled to prove that there was reasonable and probable cause for the charge contained in the other assignment. *Ellis v. Abrahams*, 8 Q. B. 709.

MISTAKE.

Money had and received.—A sum of money allowed in account by a mistake on a settlement between plaintiff and defendant, when defendant paid the balance after deduction of that sum, cannot be recovered back in an action for money had and received, the sum allowed never having passed between the parties otherwise than by such allowance. *Lee v. Merrett*, 8 Q. B. 820.

MONEY PAID.

Construction of covenant.—Defendant, to secure a debt owing from him to plaintiffs, assigned to them a policy of insurance on his life, and covenanted by the deed of assignment that he would pay the annual premium, stated to be 37l. 15s., and that, if he at any time made default, the plaintiffs might pay it and recover the amount in an action at law as for money paid to his use. Plaintiffs declared against defendant in debt, reciting the deed and alleging payment by them of a premium on default made by defendant, whereby an action had accrued to plaintiffs, &c.: **Held**, on special demurrer, that the count was good, though the deed contained no express covenant that the defendant should, in any stated event, pay the amount of the premium to the plaintiffs. *Barber v. Butcher*, 8 Q. B. 863.

PATENT.

Specification.—**Infringement**.—The specification of a patent for "improvements in the process of finishing hosiery, and other goods manufactured from lamb's wool, &c.," stated the invention to consist in submitting hosiery, and other similar goods, to the finishing process of a press heated by steam, &c., in the

manner hereinafter mentioned. A description was then given, by letters, of a drawing which represented a press, which consisted of a box heated by steam, up to which another box similarly heated was to be pressed by means of hydraulic pressure, or by screws, or other well known means. After describing the method of pressing the goods between these hot boxes, the specification concluded by confining the inventor's claim to the process *as above described*: *Held*, that a method of finishing hosiery goods, by passing them through heated rollers, was not included in this patent, and therefore was no infringement of it. *Barber v. Grace*, 1 Exch. R. 339.

PROMISSORY NOTE.

1. *Payable at particular place.*—*Presentment.*—A declaration stated, that the defendant made his promissory note, and thereby promised to pay to the plaintiff, "by the name and address of Miss Jessie Hope, at 10, Duncan Street, Edinburgh," the sum of 200*l.*, &c. Averment, that the plaintiff was always ready and willing to receive the said sum, according to the tenor and effect of the note, of which the defendant had notice. Breach, non-payment: *Held*, on general demurrer, that this was a note payable at a particular place, and that the declaration was bad for want of an averment of presentment at that place. *Spindler v. Grellett*, 1 Exch. R. 384.

2. *Agreement for renewal.*—*Indorsee.*—*H.*, having advanced large sums of money to the defendant on account of certain estates in the West Indies of which they were joint owners, received from the defendant two promissory notes to the amount of 3,000*l.*, upon an agreement which contained the following terms:—"Should the crops (of the estates) not come forward in time to provide for these notes, I shall expect to have them renewed for such period as may be found necessary from the condition of the properties." The crops proved unproductive, and the notes were renewed three times: the present action was brought on the third renewed bill, which had been indorsed to the plaintiffs with a knowledge of the agreement: *Held*, that the agreement stipulated for one renewal only, and that the plaintiffs were entitled to recover. *Innes v. Munro*, 1 Exch. R. 473.

3. *Indorsement.*—*Delivery.*—*Executrix.*—A declaration stated, that the defendants made their promissory note, and thereby promised to pay *H.* (since deceased,) or order, 300*l.*; that *H.* indorsed the note without making any delivery thereof; and that after his death his executrix transferred the note to the plaintiffs, to wit, by delivery thereof to them: *Held*, on general demurrer, that the plaintiffs had no title to sue on the note. *Bromage v. Lloyd*, 5 D. & L. 123, S. C., 34 L. O. 441.

4. *Notice of dishonour.*—*Assumpsit on a promissory note by indorsee against indorser.* The declaration alleged that the note had been indorsed to the plaintiff by the payee, and averred, "that neither at the time when the

note was made, nor afterwards, and before it became due, nor when it became due, and on presentment for payment, had the maker, or the payee, any effects of the defendant in his hands, nor was there any consideration or value for the making of the note, of the payment thereof, or its indorsement by the payee to the defendant; and that the defendant had not sustained any damage by reason of his not having had notice of the non-payment of the note. Special demurrer. *Held*, that, as against an indorser, the declaration was bad, for not stating a sufficient excuse of want of notice of dishonour; for it was consistent with its allegations, that the note might have been indorsed by the defendant for the accommodation of one of the prior parties to it, in which case the defendant would be entitled to notice of dishonour. *Carter v. Flower*, 16 M. & W. 743.

Cases cited in the judgment: *Bickerdike v. Bollman*, 1 T. R. 405; *Cory v. Scott*, 3 B. & Ald. 622; *Burgh v. Legge*, 5 M. & W. 418; *Legge v. Thorpe*, 2 East, 171; *Fitzgerald v. Williams*, 6 Bing. N. C. 69; *Kemble v. Mills*, 1 M. & G. 757; *Wilkes v. Jacks*, Peake's N. P. C. 202; *Norton v. Pickering*, 8 B. & Cr. 610; *Corney v. Mendez da Costa*, 1 Esp. 302.

5. *Indorsement.*—*A.* made a note in the form of a promissory note, payable to his own order; he indorsed it to *B.* *Held*, that *A.* might be sued upon this as a promissory note on which he was legally liable under the statute 3 & 4 Anne, c. 9. *Wood v. Mytton*, 34 L. O. 440.

SEDUCTION.

Loss of service.—An action for seduction cannot be maintained without some proof of loss of service thereby; therefore, where it appeared that the defendant had debauched the plaintiff's daughter, and that she was delivered of a child, but the jury found that the child was not the defendant's: *Held*, that the jury were rightly directed to find a verdict for the defendant. *Eager v. Grimwood*, 1 Exch. R. 61; S. C. 34 L. O. 360.

Case cited in the judgment: *Grinnell v. Wells*, 7 M. & G. 1033.

SHIPPING.

Bill of lading.—*Dangers and accidents.*—*Liability of shipowner for negligence.*—A vessel laden with goods arrived in the port of London, and was taken into the Commercial Dock to discharge her cargo. For this purpose she was fastened by tackle, on the one side to a loaded lighter lying outside her, and on the other to a barge lying between her and the wharf. The crew were discharged, except the mate, and lumpers were being employed in unloading her, when the tackle broke whereby she was fastened to the lighter, and in consequence she canted over, water got in through her ports, and the goods still on board were damaged: *Held*, that this was a loss within the exception of the bill of lading, of "all and every the dangers and accidents of the sea and navigation." *Held*, also, (in an action by the

freighters against the shipowners to recover damages (for this loss,) that the jury were properly directed, "that the owners were only bound to take the same care of the goods as a person would of his own goods, that is, an ordinary and reasonable care." *Laurie v. Douglas*, 15 M. & W. 746.

SLANDER.

1. Damages.—Inuendoes.—Words occurring in a single discourse charged in one count.—

Where a declaration in slander sets out words alleged to have been uttered, some in one discourse, and the remainder in a second discourse, and there are in form but two counts, each containing only the words alleged to have been uttered in one discourse, the declaration will be treated as containing only two counts, though each of such two counts contains separate allegations of the uttering of different words in the particular discourse. Therefore, if in each count there be any words set out which are slanderous, judgment for plaintiff will not be arrested after verdict, though the damages be general, and some of the separate allegations recite only words not actionable.

The first count stated that plaintiff was a butcher, and that defendant, contriving to cause it to be believed that plaintiff had been and was guilty of, in her said trade, fraudulently using two weights to a steelyard (as to which there was no previous direct allegation) by her used in her said trade, and of using improper and fraudulent weights in her said trade, and thereby to injure plaintiff in her said trade, in a discourse of and concerning plaintiff in her said trade, and of and concerning *M.*, a son of plaintiff and her servant in her said trade, as such servant, and of and concerning plaintiff having, as supposed by defendant, by *M.* as her agent and servant, "used improper and fraudulent weights" in her said trade, and defrauded and cheated in her said trade, and of and concerning her being, as supposed by defendant, guilty of defrauding and cheating in her said trade, and having, as supposed by defendant, in her said trade, by *M.* as her agent and servant, fraudulently used two weights to a steelyard by her used in her said trade, spoke, in the presence, &c., of and concerning plaintiff in her said trade, and of and concerning *M.*, as and then being such servant, and of and concerning plaintiff having, as supposed by defendant, by *M.*, as her agent and servant, used improper and fraudulent weights in her said trade, and being, as supposed by defendant, guilty of defrauding and cheating in her said trade, and of and concerning plaintiff having, as supposed by defendant, in her said trade, by *M.*, as her agent and servant, fraudulently used two weights to a steelyard, by her used in her said trade, these false, &c., words:—"M." (meaning the said *M.*, so being such servant,) "uses two balls to his mother's steelyard," (meaning that plaintiff, by *M.* as her agent and servant, used improper and fraudulent weights in her said trade, and defrauded and

cheated in her said trade). On motion to arrest judgment,

Held, that, the words being susceptible of both a harmless and an injurious meaning, the inuendo was properly applied to point to the injurious meaning.

The 2nd count, with similar preliminary averments and description of the intention of defendant and subject of the discourse and of the words, adding that the discourse and words were also of and concerning defendant himself, alleged that defendant, in the presence, &c., spoke, in answer to a question put by plaintiff to defendant as to whether defendant had said to *G.* that plaintiff's son used two balls to plaintiff's steelyard, these false, &c., words:—"To be sure, I (meaning defendant) did, (meaning that defendant had said to *G.* that plaintiff's son used two balls to plaintiff's steelyard, and also that plaintiff, in her said trade, had, by a son of plaintiff, as her agent and servant, fraudulently used two weights to a steelyard by her used in her said trade); I (meaning defendant) will swear to it in any Court; you, *G.*, have used them for years, (meaning that plaintiff had in her said trade fraudulently used two weights to a steelyard by her used in her said trade). On motion to arrest judgment,

Held, that the words, as stated and explained, were actionable. *Griffiths v. Lewis*, 8 Q. B. 841.

Cases cited in the judgment: *Clegg v. Laffer*, 10 Bing. 250; *Hambleton v. Vere*, 2 Wms. Saund. 171, d.

2. Words occurring in a single discourse charged in one count.—

Declaration for slander recited that plaintiff carried on the trade of buying and selling, and was a dealer in, an article of fishing-tackle called a winch; and that defendant used the trade of making and selling winches; and it charged that defendant, contriving to injure plaintiff in his said trade, and to cause his customers to believe that he was guilty of unlawfully buying goods well knowing them to have been stolen and dishonestly come by, in a discourse which he had with plaintiff, of and concerning him with reference to his said trade, and of and concerning the premises, in the presence and hearing of *J. F.*, &c., falsely and maliciously spoke, to and of and concerning plaintiff, and of and concerning him with reference to his said trade and the premises, the words, &c.:—"I" (meaning defendant) "have been robbed of about three dozen winches," (meaning such articles, &c.): "a person has been buying things at my shop, and has taken them; you" (meaning plaintiff) "have bought two, one at 3s., and one at 2s.; you" (meaning plaintiff) "knew well, when you bought them," (meaning the said winches) "that they cost me" (meaning defendant) "three times as much making as you" (meaning plaintiff) "gave for them, and that they could not have been come honestly by." The declaration then proceeded:—"whereupon the plaintiff then, in

the presence and hearing of the aforesaid persons, said to the defendant," &c., setting forth further words of plaintiff respecting winches, and alleging that defendant, further contriving, &c., thereupon, in the presence and hearing of the said persons, replied, &c., (setting out other words). "Thereby meaning," &c., "that the plaintiff had been and was guilty of buying winches, well knowing the same to have been dishonestly come by and to have been feloniously stolen by the person of and from whom the said plaintiff had so bought them."

After verdict for general damages: *Held*, on motion in arrest of judgment,

1. That the words first set out imputed that plaintiff had received stolen goods knowing them to have been stolen.

2. That the words following appeared to be spoken at the same time with the others, and formed with them a continued discourse; that the declaration, therefore, contained only a single count; and, consequently, that plaintiff was entitled to judgment, even on the assumption that the words last set out gave no cause of action. *Afred v. Farlow*, 8 Q. B. 854.

3. *Trader*.—*Toll keeper*.—An action of slander cannot be maintained by a lessee or renter of tolls, for words spoken of him in his character of contractor for tolls, after he has ceased to contract for renting the tolls respecting which the words are spoken.

Semble, the renting of tolls is not a profession or trade. *Bellamy v. Burch*, 16 M. & W. 590.

SPECIAL DAMAGE.

See *Assumpsit, Trover*.

STAMP.

See *Contract*.

SUPERCARGO.

Commission.—*Net proceeds*.—The following letter was addressed to an African captain and supercargo by his employers:—"Your commissions are 6l. per cent. on the net proceeds of your homeward cargo, after deducting the usual charges as arranged by the African Asso-

ciation, viz., 4l. per ton from the gross sales of the oil when taken from the quay, and 4l. 15s. when warehoused:" *Held*, that the commission was payable only on the sums actually realised, after deducting bad debts as well as other charges. *Caine v. Horsfall*, 1 Exch. R. 519.

TROVER.

Special damage.—In trover, damages may be given in respect of special damage, besides the value of the goods converted, if special damage be laid in the declaration.

As where, in trover for carpenter's tools, special damage was laid in respect of the plaintiff, a carpenter, being hindered from working. *Bodley v. Reynolds*, 8 Q. B. 779.

WAGES, SERVANTS'.

A menial servant, entitled under the hiring to a month's warning or a month's wages, cannot recover a month's wages for having been improperly dismissed without a month's warning, upon the common *indebitatus* count for work and labour. *Fewings v. Tisdal*, 1 Exch. R. 295.

Cases cited in the judgment: *Archer v. Hornor*, 3 C. & P. 349; *Broxham v. Wagstaffe*, 5 Jur. 845.

WARRANTY.

Liability to action for sale of unwholesome provisions.—A., a farmer, bought, in the public market of a country town, from B., a butcher keeping a stall there, the carcass of a dead pig for consumption, and left it hanging up, intending to return after completing other business and take it away. In his absence, C., a farmer, on seeing and wishing to buy it, was referred to A. as the owner, and subsequently, on the same day, bought it of A., the original buyer, without any warranty. It did not appear that any secret defect was known to any of the parties. It turned out unsound and unfit for human consumption: *Held*, that no warranty of soundness was implied by law between the farmers A. and C. *Burnby v. Bollett*, 16 M. & W. 644.

Case cited in the judgment: *Roswell v. Vaughan* Cro. Jac. 196.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

Lord Chancellor.

Michaelmas Term, 1848.

AT WESTMINSTER.

| | | |
|-----------|--------|---|
| Thursday | Nov. 2 | Appeal Motions. |
| Friday | 3 | { (Petition-day) Petitions & Appeals. |
| Saturday | 4 | { Appeals. |
| Monday | 6 | |
| Tuesday | 7 | { Appeals, Motions and ditto. |
| Wednesday | 8 | |
| Thursday | 9 | { (Petition-day) unopposed Petitions and Appeals. |
| Friday | 10 | |

| | | |
|-----------|----|---|
| Saturday | 11 | } Appeals. |
| Monday | 13 | |
| Tuesday | 14 | |
| Wednesday | 15 | |
| Thursday | 16 | Appeal, Motions and ditto. |
| Friday | 17 | { (Petition-day) unopposed Petitions and Appeals. |
| Saturday | 18 | } Appeals. |
| Monday | 20 | |
| Tuesday | 21 | |
| Wednesday | 22 | |
| Thursday | 23 | } (Petition-day) unopposed Petitions and Appeals. |
| Friday | 24 | |

Saturday . . . 25 } Appeal Motions and Appeals.

Vice-Chancellor of England.

AT WESTMINSTER.

Thursday . . . Nov. 2 Motions.
 Friday 3 } (Petition-day) Short Causes and Petitions.
 Saturday 4 }
 Monday 6 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 7 }
 Wednesday 8 }
 Thursday 9 Motions.
 Friday 10 } (Petition-day) Short Causes, Petitions, (unop^d. first,) and Causes.
 Saturday 11 }
 Monday 13 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 14 }
 Wednesday 15 }
 Thursday 16 Motions.
 Friday 17 } (Petition-day) Short Causes, Petitions, (unop^d. first,) and causes.
 Saturday 18 }
 Monday 20 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 21 }
 Wednesday 22 }
 Thursday 23 }
 Friday 24 } (Petition-day) Short Causes, Petitions, (unop^d. first,) and Causes.
 Saturday 25 Motions.

Vice-Chancellor Knight Bruce.

AT WESTMINSTER.

Thursday . . . Nov. 2 Motions.
 Friday 3 (Petition-day).
 Saturday 4 } Short Causes, Pleas, Demurrers, Exons., Causes, and Fur. Dirs.
 Monday 6 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 7 }
 Wednesday 8 Bankrupt Petitions.
 Thursday 9 Motions.
 Friday 10 } (Petition-day) Petitions and Causes.
 Saturday 11 Short Causes and Causes.
 Monday 13 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 14 }
 Wednesday 15 } Bankrupt Petitions and Causes.
 Thursday 16 Motions.
 Friday 17 } (Petition-day) Petitions and Causes.
 Saturday 18 Short Causes and Causes.
 Monday 20 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 21 }
 Wednesday 22 Bankrupt Petitions.
 Thursday 23 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Friday 24 } (Petition - day) Petitions, Short Causes, and Causes.
 Saturday 25 Motions.

Vice-Chancellor Wigram.

AT WESTMINSTER.

Thursday . . . Nov. 2 Motions and Causes.
 Friday 3 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Saturday 4 } Short Causes, Petitions, (unopposed first,) and Causes.
 Monday 5 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 7 }
 Wednesday 8 }
 Thursday 9 Motions and Ditto.
 Friday 10 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Saturday 11 } Short Causes, Petitions, (unopposed first,) and Causes.
 Monday 13 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 14 }
 Wednesday 15 }
 Thursday 16 Motions and Ditto.
 Friday 17 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Saturday 18 } Short Causes, Petitions, (unopposed first,) and Causes.
 Monday 20 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.
 Tuesday 21 }
 Wednesday 22 }
 Thursday 23 } (Petition-day) Short Causes, Petitions, (unop^d. first) and Causes.
 Friday 24 }
 Saturday 25 Motions and Causes.

COMMON LAW SITTINGS.

Exchequer of Pleas.

In and after Michaelmas Term, 1848.

In Term.

IN MIDDLESEX.

1st Sitting, Friday Nov. 3
 2nd Sitting, Saturday Nov. 11
 3rd Sitting, Monday Nov. 20

IN LONDON.

1st Sitting, Friday Nov. 10
 2nd Sitting, Friday Nov. 17

After Term.

IN MIDDLESEX.

IN LONDON.

Monday . . . Nov. 27 | Tuesday . . . Nov. 28
 (To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 23, 1848.

—"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

SUMMARY CONVICTIONS AND ORDERS BY MAGISTRATES.

11 & 12 VICT. c. 43.

HAVING laid before our readers in the last number, (*ante*, p. 397,) an abridgment of the Act introduced to facilitate the performance of the Duties of a Justice of the Peace out of Sessions, as regards Indictable Offences, we now submit an analysis of the no less important act, the professed object of which is to consolidate the several statutes relating to Summary Convictions and Orders by Justices out of Sessions, and to define the duties of magistrates in reference to such convictions and orders by positive enactments. The two acts are not only in *pari materia*, but form connected parts of the same plan, and are merely divided into separate chapters for greater convenience; an arrangement, however, which has necessarily occasioned much repetition.

The 1st section provides, that in all cases where an information shall be laid before a justice of the peace, that any person has committed, or is suspected to have committed, any offence within the jurisdiction of such justice, for which he is liable, upon summary conviction, to be imprisoned or fined, the justice is authorised to summon the party charged to answer the complaint. The summons is to be served by a constable or other peace officer, personally, or by leaving it at the last or most usual place of abode of the accused party; and the officer serving the same is to attend at the return of the summons to depose to the service, if necessary. A justice is not *obliged* to issue a summons in any case where the application

for an order is by law to be made *ex parte*. And it is provided, that no objection shall be allowed to any summons, information, or complaint, for any defect in substance or form, or for any variance from the evidence adduced, but if the justice considers the party summoned and appearing has been misled by the variance, he may adjourn the hearing of the case to a future day, upon such terms as he shall think fit.

Sect. 2 enacts, that if the justice be satisfied that the summons has been served a reasonable time before that fixed for appearance, and the party served disobeys the summons, the justice may issue his warrant to apprehend the person summoned, or may issue a warrant in the first instance, instead of a summons; or, if the summons being duly served, be not obeyed, the justice may proceed *ex parte* to the hearing of the complaint, and adjudicate thereon as if the accused had appeared.

Section 3 refers to the form of the warrant, and provides where and how it may be executed. It enacts, that certain provisions of the 5 Geo. 4, c. 18, as to backing of warrants, shall extend to warrants issued under this act, and provides that no objection shall be allowed for any defect in substance or form in the warrant, or for any variance between it and the evidence adduced; but if the party charged is misled by the variation, the hearing of the case may be adjourned, and the person charged either committed or discharged upon recognizance, at the discretion of the justice. Where a defendant is discharged upon recognizance, if he fail to re-appear, the justice may transmit the recognizance to the clerk of the peace, to be proceeded upon in like manner as other recognizances.

Sect. 4 points out the manner in which the property of partners, joint tenants, parceners or tenants in common, the ownership of works

or buildings, made, maintained, or repaired, at the expense of particular districts, the property in goods provided for the poor, and in materials for parish or turnpike roads, as well as the property of commissioners of sewers, may be described in any information or complaint.

Sect. 5 enacts, that aiders and abettors in the commission of offences punishable on summary conviction, shall be liable to be proceeded against and convicted, either with, before, or after, the principal offender, and liable to the same forfeiture and punishment, and may be proceeded against either where the principal has been convicted, or where the offence may have been committed.

By sect. 6 the provisions of the 11 & 12 Vict. c. 42, as to justices in one county acting for another, (see *ante*, p. 398,) are to extend to this act.

Sect. 7 authorises a justice to summon witnesses to attend and give evidence. If the summons be not obeyed the justice may issue his warrant, or if the justice be satisfied that it is probable the witness will not attend without compulsion, he may issue his warrant in the first instance. Persons appearing on summons, and refusing to be examined, may be committed.

Sect. 8 enacts, that complaints upon which orders for payment of money, or otherwise, are founded, need not be in writing, unless specifically required by act of parliament.

Sect. 9 declares, that in proceeding upon informations for offences punishable on summary convictions, a variance between the information and evidence as to the time at which the offence shall be alleged to be committed, shall not be material if the information was in fact laid within the time limited by law: so, likewise, a variance between the information and evidence as to the parish or township in which the offence shall be alleged to have been committed, shall not be material if the offence was committed within the jurisdiction of the justice by whom the information shall be heard and determined. If the party charged appears to be misled by any variation between the information and the evidence, the justice has authority to adjourn the hearing of the case to some future day, and meantime to commit the defendant or discharge him upon recognizance; and if the latter course be adopted and the defendant fail to re-appear, the justice may transmit the recognizance to the clerk of the peace, to be proceeded upon in like manner as other recognizances.

Sect. 10 relates to the manner of making a complaint or laying an information, and declares that, unless some particular statute shall otherwise require, they may respectively be made or laid without oath; except where the justice shall issue his warrant in the first instance to apprehend the defendant, in which case the information shall be substantiated by oath before the warrant issues. The information or complaint shall only relate to one offence or matter, and not to two or more, and this section expressly enacts, "that every such complaint

or information may be laid or made by the complainant or informant in person, or by his counsel or attorney, or other person authorised in that behalf."

Sect. 11 enacts, that where no time is specially limited for making any complaint or laying any information, such complaint or information shall be laid or made within six calendar months from the time when the matter arose.

Sect. 12 enacts, that complaints and informations shall be heard by one or two justices, as directed by the acts upon which such informations or complaints shall be founded, and if there be no such direction in any act, then such complaint or information may be heard by any one justice for the place where the matter shall have arisen. The places in which justices sit to hear complaints are to be deemed open Courts, and the complainant and accused respectively are at liberty to conduct their cases, and have their witnesses examined and cross-examined by counsel and attorney.

Sect. 13, provides, that if a defendant who has been duly summoned does not appear at the time and place appointed, upon proof of service, the justice may proceed to hear and determine in the absence of such defendant, or he may issue his warrant, and adjourn the hearing until the defendant be apprehended. If the defendant appears, and the complainant does not, the justice may dismiss the complaint, or at his discretion adjourn the hearing, and commit or discharge the defendant upon recognizances, and in the latter event, if the defendant fail to re-appear, the justice may transmit the recognizance to the clerk of the peace. If both parties appear, the justice is to hear and determine the case.

Sect. 14 directs the mode of proceeding to be pursued upon the hearing of complaints and informations. The defendant having had the substance of the complaint or information stated to him is to be asked if he have any cause to show, and if he admit the truth of the charge, and show no cause, the justice shall convict or make an order accordingly; but if the party charged shall not admit the truth of the charge, the justice shall proceed to hear the prosecutor and his witness, and the defendant and his witnesses; and if the defendant gives any evidence other than as to his general character, the prosecutor may give evidence in reply; but neither the prosecutor or defendant shall be entitled to make any observations on the evidence in reply. After considering the matter, the justice may convict, or make an order upon the defendant, or dismiss the complaint. If there be a conviction or order, a minute shall then be made, and the conviction or order afterwards drawn up in proper form and filed. If the information or complaint be dismissed the justice if he "shall think fit, being required so to do," may make an order of dismissal, and give the defendant a certificate thereof, which shall be a bar to any subsequent information or complaint for the same

matter. It is further provided, "that if the information or complaint in such case shall negative any exemption, exception, proviso, or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same."

Sect. 15. Prosecutors of informations, not having any pecuniary interest in the result, and every complainant in any such complaint, whatever his interest may be in the result, shall be competent as witness to support such information or complaint. Witnesses to be examined upon oath.

Sect. 16 gives power to justices before or during the hearing of any information or complaint, to adjourn such hearing, and meantime, either commit the defendant, suffer him to go at large, or discharge him upon his recognizances, and if he fail to re-appear, the recognizance may be transmitted to the clerk of the peace to be proceeded upon.

Sect. 17 enacts, that in all cases of conviction, where no particular form of conviction is given by the statute, creating the offence, and in all cases of convictions upon statutes hitherto passed, whether any particular form of conviction has been given or not, the convicting justice shall draw up his conviction in one of the forms given by this act, and applicable to the case or the like effect. The clause contains a similar provision with respect to orders of justices, and further directs, that where authority is given by statute to commit or distrain, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or distress shall issue, and such order or minute shall not form any part of the warrant.

Sect. 18 empowers justices, in all cases of summary conviction or orders to award costs which shall be specified in conviction, or order of dismissal, and may be recovered by distress.

Sect. 19, empowering a justice to issue a warrant of distress, provides, that if sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, any other justice may, by indorsement on the warrant, authorise the execution within the limits of his jurisdiction. Where it appears that the execution of a warrant would be ruinous to a defendant, or where there are no goods, the justice may commit him to prison.

Sect. 20. After issuing distress warrant, justice may suffer defendant to go at large, or order him into custody until return be made, unless he gives security by recognizance, and if he fail to re-appear, the justice may transmit such recognizance to the clerk of the peace to be proceeded upon.

Sect. 21. In default of sufficiency of distress, the justice may commit the defendant with hard labour for such time as has been appointed by the statute on which the conviction or order was founded, unless the sum adjudged to be paid, with costs and charges, be sooner paid.

Sect. 22. In all cases of penalties, convictions, or orders, where the statute provides no remedy in default of distress, the justice may commit the defendant to prison by warrant, for any term not exceeding three calendar months.

Sect. 23. Where the statute under which a conviction or order is made makes no provision for a levy by distress, Justices may order commitment in the first instance for non-payment of a penalty or of a sum ordered to be paid.

Sect. 24. Where the conviction is not for a penalty or for payment of money, but some other act is directed to be done, in case of the defendant's neglect or refusal, justices are empowered to order commitment; where costs are adjudged to be paid by the defendant, they may be levied by distress, and in default the defendant may be committed for a further term.

Sect. 25. Where a defendant is already undergoing imprisonment, the imprisonment for a subsequent offence is to commence at the expiration of that for the previous offence.

Sect. 26. If an information or complaint be dismissed with costs, the sum awarded for such costs may be recovered by distress upon the prosecutor's goods, or in default he may be committed.

Sect. 27 declares, that after an appeal against a conviction or order shall be decided, the justice may issue his warrant of distress or commitment for execution as if no appeal had been brought. If costs of appeal are ordered by the Court of Quarter Sessions to be paid and are not paid, upon certificate of nonpayment, the amount may be levied by distress, or in default the party liable may be committed for three calendar months, unless the amount with charges be sooner paid.

Sect. 28 provides, that upon payment of penalty and expenses a distress shall not be levied, or the party if imprisoned for nonpayment shall be discharged.

Sect. 29. In all cases of summary proceedings, one justice may receive the information or complaint and issue his summons or warrant, even where the information or complaint must by statute be heard and determined by two or more justices; and after the hearing by two or more, one justice may issue his warrant of distress or commitment. Provided that where by statute it is required that two justices shall hear and determine, two shall be present and acting during the whole of the hearing and determination.

Sect. 30. The justices at Quarter Sessions are from time to time to make tables of the fees to be paid clerks of the peace, of special and petty sessions, and of justices, which table is to be submitted to, and approved of, by the Secretary of State. After such tables have been framed, confirmed, and distributed, any person demanding or receiving a greater fee than is set down in the table, shall forfeit 20l. Until this regulation takes effect, the fees now payable are to be received.

Sect. 31. Sums levied under distress war-

rants for penalties, and paid by persons committed for non-payment of monies, are to be paid over in the first instance to the clerk of the division in which the justice issuing the warrant shall usually act, and such clerk shall pay over such monies to the parties entitled to receive the same, or in default to the treasurer of the county. The clerks are to keep accounts of all monies received in a specified form, and render the same to justices at Sessions.

Sect. 32. The forms in the schedule, or forms to the like effect to be deemed valid.

Sect. 33. Metropolitan police magistrates and stipendiary magistrates in other places may act alone. Nothing herein contained to affect powers contained in 10 Geo. 4, c. 44, 2 & 3 Vict. c. 47, 2 & 3 Vict. c. 71, and 3 & 4 Vict. c. 84.

Sect. 34. The lord mayor or any alderman of London may act alone, and nothing herein shall affect the powers contained in the London Police Act, (2 & 3 Vict. c. 94).

Sect. 35. This act not to extend to warrants or orders for the removal of the poor, complaints or orders with respect to lunatics, informations or complaints under the statutes relating to the revenue, or complaints, orders, or warrants in matters of bastardy, except the provisions relating to backing warrants; nor is the act to extend to proceedings under the Factory Acts.

Sect. 36 repeals the whole or parts of the following statutes:—18 Eliz. c. 5, s. 1, (in part); 31 Eliz. c. 5, s. 5, (in part); 27 Geo. 2, c. 20, ss. 1 & 2; 18 Geo. 3, c. 19, ss. 1, 2, 3, & 5; 33 Geo. 3, c. 55, s. 3; 3 Geo. 4, c. 23; 5 Geo. 4, c. 18; and 6 & 7 W. 4, c. 114, s. 2.

Sect. 37. This act to extend to Berwick-upon-Tweed, but not to Scotland, Ireland, or to the Isles of Man, Jersey, Guernsey, Alderney, or Sark, except the provisions as to backing warrants under 11 & 12 Vict. c. 42.

Sect. 38. This act to commence and take effect from the 2nd October, 1848.

As in the act the summary of which appeared in our last number, the 11 & 12 Vict. c. 42, contains a schedule, the forms contained in which are specifically referred to by section 32. Those forms, or forms to the like effect, are to be used in all cases to which they are applicable.

The forms are indicated alphabetically, and are thus described in the schedule.

A. Summons to the defendant upon an information or complaint.

B. Warrant where the summons is disobeyed.

C. Warrant in the first instance.

D. Warrant of committal for safe custody during an adjournment of the hearing.

E. Recognizance for the appearance of the defendant, where the case is adjourned, or not at once proceeded with. Notice of such recognizance to be given to the defendant and his surety.

F. Certificate of non-appearance to be endorsed on the defendant's recognizance.

G. (1.) Summons of a witness. G. (2.) Warrant where a witness has not obeyed a summons. G. (3.) Warrant for a witness in the first instance. G. (4.) Commitment of a witness for refusing to be sworn or to give evidence.

H. Warrant to remand a defendant when apprehended.

I. (1.) Conviction for a penalty to be levied by distress, and in default of sufficient distress, imprisonment. I. (2.) Conviction for a penalty, and in default of payment imprisonment. I. (3.) Conviction when the punishment is by imprisonment, &c.; or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress.

K. (1.) Order for payment of money to be levied by distress, and in default of distress imprisonment. K. (2.) Order for payment of money, and in default of payment imprisonment. K. (3.) Order for any other matter where the disobeying of it is punishable with imprisonment.

L. Order of dismissal of an information or complaint.

M. Certificate of dismissal.

N. (1.) Warrant of distress upon a conviction for a penalty. N. (2.) Warrant of distress upon an order for the payment of money. N. (3.) Endorsement in backing a warrant of distress. N. (4.) Constable's return to a warrant of distress. N. (5.) Warrant of commitment for want of a distress.

O. (1.) Warrant of commitment upon a conviction for a penalty in the first instance. O. (2.) Warrant of commitment on an order in the first instance.

P. (1.) Warrant of commitment on a conviction where the punishment is by imprisonment. P. (2.) Warrant of commitment on an order where the disobeying of it is punishable by imprisonment. P. (3.) Warrant of distress for costs upon a conviction where the offence is punishable by imprisonment. P. (4.) Warrant of distress for costs upon an order where the disobeying of the order is punishable with imprisonment. P. (5.) Warrant of commitment for want of distress in either of the last two cases.

Q. (1.) Warrant of distress for costs upon an order for dismissal of an information or complaint. Q. (2.) Warrant of commitment for want of distress in the last case.

R. Certificate of clerk of the peace that the costs of an appeal are not paid.

S. (1.) Warrant of distress for costs of an appeal against a conviction or order. S. (2.) Warrant of commitment for want of distress in the last case.

T. Form of account of clerk of the justices at petty sessions, and of the keeper of the gaol or House of Correction, to be returned monthly.

Such are the enactments and forms contained in the statutes to which the legislature has given its sanction, under the

superintendence of the Attorney-General, and which, whether as regards the object, the subject-matter, or the variety of the provisions, we are disposed to class as the most important measures relating to the law passed in the last Session of Parliament. The epitome of the acts submitted to our readers has necessarily occupied a considerable space. Many future opportunities will arise for discussing the provisions in detail.

REFORM IN CHANCERY.

THE MASTERS' OFFICES.—MR. FARRER'S OBSERVATIONS.

WE resume our review of Master Farrer's pamphlet on the proposed alterations in the jurisdiction and practice in the Masters' offices. On the former occasion we noticed the improvements which the Master was inclined to recommend,^a and proceed now to his observations on the suggestions made by the Law Amendment Society. To these we shall add some extracts from the Memorial of the Metropolitan and Provincial Law Association, which Mr. Farrer had not an opportunity of seeing before the publication of his pamphlet.

The Law Review,^b which has authority to publish the proceedings of the Law Amendment Society, contains the Report of the Committee on Equity on the reference made to that Committee "to consider whether any and what improvement can be made in the present mode of proceeding in the Master's Office." The Report contains nine suggestions.

The first is,—“That each Master shall have a daily list of causes, and that each cause shall be called on in its turn, and be proceeded with continuously until the whole matter capable of being considered and disposed of has been gone through.” Upon this the Master observes that the system proposed

“Would be very acceptable to the Masters, and would be a great relief to them from the hearing matters piecemeal, and often after long intervals between the attendances; it would also be a saving of time. But the objection to it consists in the difficulty in carrying it into execution. If adopted there would be five Superior Judges and ten Masters sitting with cause lists. The inconvenience and difficulty arising out of the sitting of so many judges and masters at the same time would be very much increased by the Courts sitting at Westminster during the terms. It is feared, that business

could not be practically carried on under such a system as should render attendance in the Master's Office compulsory, without which it would be of little value. In a profession in which the attendance of the practitioners is required in so many places, it may with good reason be urged, that their convenience must be consulted, so far as to give them some power to choose their times of proceeding in some of those places; the defect in the present system is, not that they possess this power, but that they possess it without some control to prevent the abuse of it. This suggestion, whenever acted upon, must be preceded by orders enforcing a great change in the manner in which states of facts, &c., are brought before the Master; or, if the expression may be used, in which the pleadings are conducted. It frequently happens that the proceedings are suspended by the impossibility of proceeding without amendments, or counter states of facts, or further evidence. Indeed it has become a common practice to leave states of facts in the office without evidence, and then to attend for the purpose of obtaining (as it is expressed) the Master's view or opinion of the evidence he will require. The Master might (perhaps ought) to refuse to proceed, and tell the parties, ‘It is your duty to make your case perfect; my duty is to decide upon your case when so perfected; it is not my duty to advise you upon evidence.’ The parties say, they are quite aware of that, but the Master's general view would be a great accommodation to them, probably save time and expense. The Master gives way under protest, that if, when the case comes before him, he should require further evidence, it must not be said that they had followed his opinion; thus the Master becomes a party to ‘instructing the case.’”

The second suggestion is,—“That the Master shall fix a time for the disposal each day of *matters of course*,” &c.

“This is open to objection, 1st, because there are no matters properly of course in the Master's Office. Many matters are indeed easily disposed of, but it never can be said of any sort of proceeding before him that it is of course. For instance, applications for time to answer, to amend bills, settling interrogatories, &c., are, generally, easily disposed of, but not unfrequently questions of difficulty arise upon them. 2nd. Because the present system works well in regard to the matters referred to as matters of course; it is the junior clerk's duty to give warrants, so that they shall not clash with other business. This requires a knowledge of the practice, and acquaintance with the causes which are in progress before the Master. The proposed restriction might be inconvenient to the practitioners without any benefit to the suitors.”

The Master next adverts to the 8th & 9th suggestions, having objects in view extremely important, namely, “that states of

^a See p. 317, *ante*.

^b Law Review, vol. 6, p. 308.

facts, &c., and evidence, shall be made complete within a proper time, and that no further evidence shall be received after the Master has given his opinion."

"Whether these suggestions propose the best remedies for the evil intended to be removed may be subject of consideration, but it is manifest that there must be some means devised to effect the object aimed at, namely, '*the making of states of facts and evidence complete.*' We submit, by way of illustration of our meaning, that on a litigated state of facts the Master might direct a warrant to issue to show cause why he should not proceed without further evidence, or why he should not allow or disallow a state of facts. If no cause were shown, then the Master should proceed, and no further evidence ought to be received or amendment of state of facts made without leave of the Court, as is the case, according to the present practice, after the warrant to prepare the report has issued, when no further evidence can be received or claims left without leave of the Court. Such a show-cause warrant ought to be issuable only by leave of the Master, to prevent the growth of a practice of issuing warrants of this nature on all occasions, which in many cases would lead to useless expense by needlessly multiplying warrants.

"The piecemeal, desultory manner in which evidence is now given is often unsatisfactory. There are in some cases intervals of weeks and months between the leaving of affidavits or examination of witnesses, instead of (as in the Courts of Law) the whole evidence being taken at once. If the Master is to act *quasi* a common law judge and jury, the proceeding ought to be made by the orders of the Court to resemble the form of proceeding in the Courts of Law as much as is practicable. Reform of the loose manner of pleading (if we may so express ourselves) and giving evidence lies at the root of any real improvement in the Master's Office; without such reform continuous proceedings are impracticable."

The Master next considers two other Reports of the Law Amendment Society, contained in the 7th volume of the Law Review, and particularly the leading proposition of both reports, viz.,—"*That some causes may commence in the Master's Office.*" The learned writer on this important subject thus comments:—

"If so great a change can be effected, it might be found to be productive of considerable saving, both of time and expence; but it is a change of the system of which it is not easy to say how it would work, and of which no one can with any confidence predicate that it would be attended with successful results.

"The first consideration that suggests itself is the question of parties. Unless the suit be properly instituted by making all persons interested, according to the practice of the Court,

parties to it, great inconvenience might arise by proceedings being taken in the absence of such interested persons. Proceedings so taken would not be obligatory upon them. The Court looks with great anxiety to see that all proper parties are brought before it; the power of determining who are the proper parties is one which must continue with the Court alone.

"The second consideration is, the form and mode of pleading. There must be some form, such as a petition, or bill, or state of facts, which ought to contain a statement of wills, deeds, and other instruments, with proper allegations; to this there must be an answer in some regular form of pleading. Then the Master must give orders or directions as to the proceedings which he thinks ought to be taken before him.—in other words, he must make a (*quasi*) decree: this would be necessary to prevent uncertainty and confusion in the subsequent prosecution of the suit. Then suppose any of the parties to be dissatisfied with the orders or directions which the Master gives, as erroneous, or as too large, or as too limited, he must have the right of appealing to the Court. Few cases are so simple, as not to offer questions as to the proper orders and directions. Though the appeal might be only upon one point, yet the whole proceeding must, in most, if not all, cases go before the Court. The Master would not easily in some cases satisfy parties upon such questions, particularly when it is considered, that he would not be assisted by that full discussion which takes place in Court, where leading and junior counsel are heard.

"A third consideration is, ought the Master to entertain such proceedings as might be open to pleas and demurrers? Certainly not, would be the answer in which all would agree—appeal from his decision would be certain in cases of pleas and demurrers.

"A fourth consideration is the difficulty which there would be in defining accurately the class of causes and proceedings that should commence in the Master's Office. Suppose it to be proposed to confine this class of causes to suits for the administration of testators' and intestates' estates; though some of these are so simple as that one form of decree might be applicable to them, yet sometimes they are so complicated as to require a decree containing special orders and directions. If any practice of this kind be introduced it must be in the most gradual way. It must begin with cases in which parties can and do consent. But it is exceedingly doubtful, whether any plan will work so well as that in which the judge makes the decree, containing all necessary orders and directions, and the Master executes them. It might, however, be useful to give more discretionary power to the Master, so as to enable him, if the propriety for any new inquiry, not in the decree, should arise, to allow it to be gone into, and to introduce it, with a special submission to the Court, into his general report. It is of the highest importance, that the decree upon which all future proceedings are

founded should, before any of them are taken, be as perfect as possible, and as satisfactory as possible to the parties. The most experienced lawyers will insist, that it is impossible to obtain such degree of perfection and satisfaction from any other jurisdiction than the Court itself."

On this head of proposed improvements in the Masters' Office, we extract the following suggestions from the recent memorial presented to the Lord Chancellor by the Equity Committee of the Metropolitan and Provincial Law Association:—

"4. That a primary jurisdiction should be given to the *Master* in all cases of *equitable account* in which the accounting parties consent to submit to such jurisdiction; and that such jurisdiction should be either *absolute* (except subject to an appeal) or a jurisdiction to entertain the matter without order of reference, but subject to *confirmation* and *further direction* by the Court.

"The same principle may be usefully applied to all that class of cases, in which a reference to the Master is almost of course, such as *compromising suits*; arrangements when the parties interested therein are not *sub-juris*; proposals for *marriage of wards*, and for *sales by private contract*, power for parties to *bid*.

"[The latter practice, first applied to the letting, setting, and managing by receivers, and lately introduced into lunacy and extended there, has been of great benefit.]

"5. Also primary jurisdiction for the appointment of *new trustees* where there is no power of new appointment in the instrument creating the trust or none capable of being exercised.

"6. Also primary jurisdiction to *approve maintenance and guardian for infants*.

"7. Also to grant *stop orders on funds in Court*; and to make such other orders as may be expedient in cases where parties consent.

"8. To take the consent of *married women* to payments out of Court to their husbands.

"[With regard to consent where married women or infants are interested, the Masters are by the present scheme of the Court peculiarly the parties to protect them; and your memorialists would propose that all consents for married women and children should be binding if the Master by his signature should sanction such consents.]"

It is contended by the advocates of this summary jurisdiction, that whilst its adoption would diminish both delay and expense in the several classes of cases above pointed out, the pecuniary interests of the profession would not suffer; on the contrary, that the business in the Court of Chancery would largely increase, and many suits be instituted which are now stifled in the outset from apprehension of interminable delay and ruinous costs.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the *present* Session of Parliament, printed in this and the last volume of the *Legal Observer*, are as follow:—

Extending Time for making Railways, 35 L. O. 204.

Regulating the Queen's Prison, ib. 555.

North American Passengers, ib. 581.

Crown and Government Security, ib. 600.

Oaths in Chancery, p. 7, *ante*.

Stamp Duties Assimilation, p. 8, *ante*.

Trial of Controverted Elections, p. 23, *ante*.

Removal of Aliens, p. 182, *ante*.

Annual Indemnity, p. 221, *ante*.

Suspension of the Habeas Corpus Act (Ireland), p. 280, *ante*.

Poor Removal, p. 293, *ante*.

Commons Inclosure, p. 324, *ante*.

Game Certificates, p. 341, *ante*.

Joint-Stock Companies, p. 357.

Law of Elections, p. 377.

Law of Bankruptcy, p. 377.

Administration of Justice by Magistrates out of Sessions, p. 397.

Administration of Criminal Law, p. 403.

RELEASE OF BANKRUPTS.

11 & 12 VICT. c. 86.

An Act to empower Commissioners of the Court of Bankruptcy to order the Release of Bankrupts from Prison in certain Cases. [31st August, 1848.]

1. *Commissioner may order release of bankrupt who may be in prison for debt at time of obtaining protection.*—Whereas it occasionally happens that persons in prison for debt who have been adjudged bankrupt, and who have surrendered to their fiats, are nevertheless detained in prison during the proceedings under the bankruptcy, which occasions great inconvenience, and it also occasionally happens that bankrupts whose certificates have been refused are taken in execution by creditors who have not proved their debts under the fiat, and are detained in prison, and are unable to obtain their release by any application to any Court of Justice; and it is expedient to empower the Courts of Bankruptcy to release such persons, if they shall think fit: Be it enacted, That where any person has been adjudged bankrupt, and has surrendered to his fiat, and obtained his protection from arrest, pursuant to the practice in bankruptcy, if such person shall be in prison for debt at the time of his obtaining such protection, any commissioner acting under such fiat may order his immediate release from prison, either absolutely or upon such condition as

such commissioner shall think fit: Provided always, that such release shall in nowise affect any rights of the creditor at whose suit he may be in prison against the debtor, except the right of detaining him in prison whilst protected from imprisonment by order of the Court of Bankruptcy.

2. *Commissioner may order release of bankrupt in execution under a capias after a certain term of imprisonment.*—And be it enacted, That if any bankrupt whose last examination shall have been adjourned *sine die*, or whose certificate shall have been suspended or refused, shall be in execution or be taken in execution under a *capias ad satisfaciendum* at the suit of any creditor who might have proved under the fiat, and detained in prison, any commissioner acting under his fiat may order his release, after he shall have undergone such term of imprisonment, not exceeding two years, as to such commissioner may seem a sufficient punishment for such offences as he may appear to such commissioner to have been guilty of.

EVIDENCE OF PROCLAMATIONS OF FINES.

11 & 12 VICT. c. 70.

An Act for dispensing with the Evidence of the Proclamation on Fines levied in the Court of Common Pleas at Westminster. [31st Aug. 1848.]

1. *Fines levied in the Court of Common Pleas to be deemed fines with proclamations.*—Whereas, notwithstanding all fines levied in the Court of Common Pleas at Westminster previously to the abolition of fines were levied with proclamations, yet unnecessary trouble and expense are occasionally incurred by parties being required to procure evidence of such proclamations having been in fact made: Be it enacted, That all fines heretofore levied in the said Court of Common Pleas shall be conclusively deemed to have been levied with proclamations, and shall have the force and effect of fines with proclamations.

2. *Pending proceedings not to be affected.*—That nothing herein contained shall extend to or affect any proceeding at law or in equity pending at the time of the passing of this act.

3. *Not to extend to fines concerning lands, &c. possessed under adverse titles, &c.*—That this act shall not extend to any fine heretofore levied of or concerning any lands, tenements, or hereditaments which at the time of the passing of this act shall be actually possessed or enjoyed by any person or persons under a title adverse to or inconsistent with the operation of such fine if levied with proclamations, but in all such cases it shall be necessary for all parties alleging that such fine was levied with proclamations to prove such allegation in the same manner as if this act had not been made.

4. That this act may be amended or repealed by any act to be passed in this present session of parliament.

PRACTICE AT THE JUDGES' CHAMBERS.

In the last two numbers we noticed the question under discussion, regarding the attendance of the Chief Justices and Chief Baron at Chambers, and have pointed out the means of reducing the extent of the business by which the judges are oppressed during a considerable portion of the year. If three-fourths of that business were transferred, as ought to be the case, to the Masters of the Courts, the remainder could be dispatched by the Puisne Judges, without inconvenience to themselves, and without calling on the Chiefs to take any share of it. Having given the letter of the Lord Chief Justice on the one hand, we now add that of Mr. Justice Coleridge on the other.

We understand that Chief Justice Wilde has given much time and most patient attention to all the applications which have come before him at chambers.

“*Heath's-court, Sept. 3, 1848.*”

“My dear Attorney-General,—My attention has been called this morning to the *Times'* report of a speech made by you, and a letter from the Lord Chief Justice of the Common Pleas, used by you in the House of Commons on Friday last. I am personally interested in both, because if the view there presented be correct, I am the judge now in default, and who ought to be in attendance at chambers. Having seen no authorized copy of the letter, it will be better for me to make no direct communication on what may be an incorrect report, but to state as accurately as I can from recollection the facts of the case, and I have this advantage, that I was present at the meeting referred to, took part in the discussion, and have had occasion to refresh my memory on the subject. It is perfectly correct that until 1838 it was not considered the duty of any judge to attend in town during the long vacation. At a meeting of the judges either in that year or the preceding winter, the subject was taken into consideration, and a resolution was come to that for the future the junior judge who had not once performed the duty should in every year undertake the attendance at chambers during the long vacation. In the course of the discussion it was distinctly considered whether the chief justice and the chief baron should attend in town, and it was without any division resolved in the affirmative, on the ground that as we were all undertaking a new duty incumbent on none of us when appointed, there was no occasion for exempting them, and the rather as they in their turn, and according to seniority only of appointment, claimed to take the chamber business during the circuits—the practice as to both having grown out of the same circumstance—the appointment of three additional judges. Lord Denman and the late Lord Chief

Justice were both present, and, speaking from recollection, I am certain that neither of them expressed any dissent. Lord Abinger was not present, and he did dissent from the whole resolution, and decided that he would not be bound by it; not, however, because he took any distinction between the chiefs and the puisne judges, but because he thought that some recreation and cessation from labour were necessary for every judge in every year, and that he was not called on to add spontaneously to the duties which he had undertaken on his appointment. He died before it came to his turn; and whether he would have adhered to his resolution of course cannot be known. I was not aware that any judge who was present at the framing of the rule had ever expressed a doubt as to its construction or operation, and I had only heard in so vague a way, before the circuit, of the Lord Chief Justice of the Common Pleas questioning it, as to make me think it probable he might take the opinion of the judges upon it. This not being done, I concluded that no difficulty could be made. I left town under that impression; nor was I informed until the end of the circuit that the chambers would be left unprovided. When, according to a plainly expressed rule my time shall come, I trust I will not be found absent from my post. At present I say nothing of the exhaustion consequent on a laborious circuit, because I am unwilling, by acquiescence in the view which the Lord Chancellor takes of it, to affect the interests of the puisne judges in a matter of no small importance to their comfort and health. I should be obliged to you, in your place, to give this communication the same publicity which you have given to the letter of the Lord Chief Justice, and I shall send a copy of it to the Lord Chancellor.—I remain, my dear Attorney-General, yours very truly.

“S. T. COLBRIDGE.

“The Attorney-General, M. P., &c.”

ENCROACHMENTS ON THE RIGHTS OF THE PROFESSION.

NOTARIES PUBLIC.

WE recently noticed an instance of those invasions of professional rights which are constantly taking place, in the case of the appointment of unqualified persons to the office of Receiver of Droits of Admiralty.^a Were the duties of the office confined to matters not usually performed by professional men, we might let the complaint pass,—though we think it is the duty of government to delegate to professional men, instead of others, the execution of the powers conferred by acts of parliament, though not strictly of a legal character.

But where the duties are such as have hitherto been performed by attorneys, or by notaries public, who are obliged to undergo a long and expensive term of qualification,^b we think it is most impolitic, as well as unjust, to supersede them, and appoint dealers and chapmen in their stead. The interest of the public requires that the learning and respectability of the members of the profession should be encouraged, and their rights and interests protected. The misfortune to the public, as well as the profession, is, that the recommendations of the supporters of party politicians are preferred to the claims of professional merit. The furtherance of some abominable political job is generally at the root of the mischievous invasions of professional rights which we have had such frequent occasion to notice.

The grievance we now refer to arises under the 9 & 10 Vict. c. 99, “for consolidating and amending the Laws relating to Wreck and Salvage,” in carrying out which act several unprofessional persons have been appointed by the Receiver-General to act under him under the style of “Receivers of Droits of Admiralty.” By the 16th section great powers are conferred upon such Receivers in the examination upon oath of masters of vessels whose ships may be or may have been in distress.

It is manifest that the notaries public are the only proper persons to be employed in taking such examinations. They have been long accustomed to the discharge of such duties, and perform them satisfactorily. It is true that the masters of vessels may, notwithstanding the examination before the Admiralty Receiver, resort to the Notary for other purposes, but where they have been examined upon oath by the Receiver, the masters will in general not deem it requisite to appear before a notary public to note their protests according to the ancient and established custom. These protests are usually drawn up with great care and accuracy, and if faith and confidence are to be reposed in formalities, it is essential they should be attested by men of unquestionable character and ability.

It is a great hardship upon notaries public that tradesmen should be appointed to the office of “Receivers of Droits of Admiralty,” and thereby be enabled to exercise the powers conferred by the 16th section of the “Wreck and Salvage Act,” inasmuch as such tradesmen are at once placed upon an equality with notaries public, without

^a See p. 297, *ante*.

^b In the seaports those professions are frequently combined.

being subject to the expenses which are borne by the latter in exercising their duties.

We invite our correspondents in the seaports to communicate the instances within their knowledge of improper appointments of these Receivers, and when a sufficient number of cases have been collected, we have no doubt the matter will be taken up.

DIGESTING AND NOTING UP CASES.

Our readers will have observed, that in the Analytical Digest of Cases reported in all the Courts, we add to each decision the Cases cited in the Judgment. We have not deemed it necessary to give the cases referred by counsel, many of which have only a remote bearing on the point in question; but the prior authorities to which the Court refers, are of course important, and these are carefully noted.

Classified as are the several decisions in the respective Courts for convenient reference,—a complete section being generally comprised in each number,—it is gratifying to learn that the plan which has been adopted for the last three years is found useful, both to the practitioner and the student, and supplying whatever may be wanted in our original Reports.

A publication has been recently commenced, called the "Equity Case Reference Table," intended as an aid to "noting up" the current cases decided in the English Courts of Equity.*

The writer in his preface states, that—

"This Table, which is compiled with the view of facilitating and reducing to a mechanical operation, capable of being undertaken by clerks of ordinary capacity, the useful but tedious process of 'noting up' the current cases, is proposed to be published at intervals, as soon as may be after the appearance of each new number of the Chancery Reports.

"To use the Table for the purpose for which it is designed, it is only necessary to comply with the directions at the headings of the several columns.

"The cases referred to in the second column are selected from those cited in the arguments of counsel, and the decisions of the Courts upon the corresponding cases in the first column, with the occasional addition of such further authorities of importance bearing upon the adjudicated points as may happen to fall under the compiler's observation."

Our Analytical Digest will, we think, supply the desideratum to which the learned annotator refers. We nevertheless wish him success in his undertaking.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

STATUS OF ATTORNEYS.

REFERRING to the Annual Report of the Committee of Management of this Association, and the series of Questions or Topics of Inquiry on the Status of Attorneys,* which we lately printed, we trust that these questions will be very generally answered, not only by the members of the association, but by other members of the profession,—each replying to such parts as may come within the range of his own knowledge or experience. The Committee ought to be promptly supported in their labours by their brethren in general. The communications which may be made in answer to these queries will show the extent of the co-operation on which the Committee may depend. We know how busy each man is in the affairs of his clients, and how generally true it is amongst lawyers, as others, "that what is every body's business is nobody's;" yet on this occasion we hope there will be no unwillingness to promote the good cause. Whilst thus exhorting our readers to come forward, we shall willingly give publicity to their contributions to the general stock, through the medium of our pages, and shall gladly lend our aid towards the redress of the grievances complained of.

TAXES ON JUSTICE.

To the Editor of the Legal Observer.

SIR,—You have often forcibly called attention to those heavy burdens borne by the Suitors in Chancery, on which a Committee of the Commons has now been sitting for two sessions. Nothing practical has yet been effected towards the relief of the suitors, who are still required to pay the salaries of the Lord Chancellor and the two Vice-Chancellors, of the Masters in Chancery, and other officers of the Court, besides salaries and compensation to the officers of the Six Clerks' Office, which last salaries and compensations alone amount to 70,000*l.* a year.

The total sum paid out of the Suitors' Fund, and the fees levied on the suitors in 1847, as appears by the Accountant-General's Account, was for the whole of the above purposes,

* Published by C. Reader, 29, Bell Yard.

* See the Topics, p. 222, and the Report, pp. 302, 343, *ante*.

207,654*l.* 8*s.* 2*d.* The amount of fees levied on the suitors alone in 1847, was 137,293*l.* 17*s.* 7*d.*

It appears from the Accountant-General's Account for 1842, printed by the House of Commons in 1843, that the charges on the suitors levied by fees in 1842, amounted to 54,600*l.* only, and that in the following year, 1843, the charges so levied had increased to 142,765*l.* 13*s.*, being an increase of charges levied by fees on the suitors, of 88,165*l.* 12*s.* 8*d.* in that year alone.

The present Lord Chancellor, Lord Cottenham, on throwing out Lord Lyndhurst's Charity Trusts' Bill observed, in reference to these compensations, that in his opinion the time had arrived when parliament must find it necessary to relieve the suitors in the Court of Chancery from the burden to which they were rendered liable. It was incumbent on the public to relieve the suitor not only from many of the fees now charged upon him, but also from all charges and compensations to officers.

The Suitors' Funds arising from unclaimed dividends, amount to 3,000,000*l.* Some part of this fund might well be employed in buying up the compensations awarded for abolished offices. The parties entitled to the compensations will, no doubt, readily assent to reasonable inquiry at the treasury, or at all events, let the 30,000*l.* a year of the surplus dividends arising from the 3,000,000*l.* be employed in the relief of the present suitors. Why should the burden of these compensations fall entirely upon the suitors of the present day, instead of being distributed over a period of sufficient extent to render the burden light.

R.

MOOT POINTS.

CONVEYANCE WITHOUT CONSIDERATION.

To the Editor of the Legal Observer.

SIR,—Without the slightest desire to main-

tain an erroneous opinion formed rather hastily on the question propounded by *Civis*, p. 309, as to the effect of a fine levied without consideration, I hope you will pardon my attempt to explain the grounds upon which I ventured to answer his query.

A fine in its nature comprehends two ideas: one, that the party making the acknowledgment had an estate to convey; secondly, that a *controversy* existed as to the right to the property conveyed. The concord acknowledges the right to be in the complainant, and further, all parties, privies and strangers, are concluded by the fine, unless within five years after proclamation they interpose their claim, except under certain disabilities.

Conveyances are the acts of the parties. *Fines* are the act of a Court of Record, and binding upon the parties without any pecuniary consideration moving them. The Statute of Elizabeth was passed to protect purchasers (*bonâ fide*) against mere *voluntary conveyances*, and, as I conceive, not to give the cognizor a right to re-open and again dispute a question which the fine had solemnly concluded.

What the intelligent writer at page 365, *ante*, means by saying, that a fine levied in consideration of the Statute of Elizabeth is inoperative, I cannot exactly ascertain, not having the cases he refers to before me; but if he means to say that it has been judicially decided by the cases referred to, that a fine has been set aside for want of a valuable consideration, then I confess I am wrong in my view of the matter, and shall be glad to be set right.

Supposing I am wrong in my conclusion, it would appear that if a party taking a *voluntary conveyance* himself, sell the same for a valuable consideration, the prior conveyance cannot afterwards be treated as void, so as to defeat the right of the last purchaser. 2 *Vernon*, 44; 1 *Meriv.* 633; 19 *Ves.* 218. T. W. H.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor of England.

Hitchcock v. Duke of Buckingham, July 13, 1848.

ANSWER.—EXCEPTIONS.—IMPERTINENCE.

An auctioneer's list of timber on an estate, set out in the schedule to an answer, in answer to the interrogatory whether any and what timber had been cut down, is impertinent, although the remaining portion of the schedule is pertinent, and the answer is in itself sufficient.

In this case exceptions had been taken to the answer of a defendant on the ground that one of the schedules to the answer set forth a transcript of the auctioneer's list of timber on an estate as being one of a list of documents in the possession of the defendant. The Master overruled the exception, and exceptions were taken to his report.

Mr. *Glasse*, for the exceptions, contended that the schedule, although impertinent in part only, was still sufficiently impertinent to warrant exceptions being taken, citing *Byde v. Masterman*, 1 *Cr. & Phil.* 265, and *Boyd v. Boyd*, an unreported case before the Vice-Chancellor and Lord Chancellor.

Mr. *Elmsley*, contra. The interrogatory asked whether any and what portion of the timber had been cut down, and it was impossible to answer that fully without setting forth a list. *Wagstaff v. Bryan*, 1 *Russ. & Myl.* 28; *Tench v. Cheese*, 1 *Beav.* 571. It had been laid down by Lord Eldon and other judges that when the pertinent and the impertinent were so mixed up as not to be severed, and the answer was sufficient, the whole was to be taken as pertinent. That rule applied here, where it was admitted that a portion only was impertinent.

The *Vice-Chancellor* said, in the case of *Boyd v. Boyd*, there were whole pages taken up with lists of letters, such as "A. to B.," "B. to A.," &c., which were clearly of no use, and he should like to have known exactly what the Lord Chancellor said in that case. It appeared to him, however, that it was quite wrong to set out catalogues in the schedule. Mr. Elmsley endeavoured to shelter himself under a decision of Lord Eldon's, where he said, that where an answer set forth matter which was immaterial and matter which was immaterial, unless you could at once separate the two, the whole was to be considered as immaterial. Mr. Elmsley had very ingeniously put the exact converse of that principle as the rule, and in effect said, that because some good was mixed up with bad the whole was good. He rather thought that adhering to the rule laid down by Lord Eldon, and adopted, as he understood it, by the Lord Chancellor in *Boyd v. Boyd*, he should not allow the answer in the form in which the Master had allowed it, and the exceptions to the Master's report must therefore be allowed.

Vice-Chancellor Knight Bruce.

Ex parte Pearl, in re Maya's Will and the Trustee Act. March 24, 1848.

LIFE INTEREST.

A testator gave the interest of stock to a lady (who afterwards married) for her life, and after her death, directed the capital to form part of the residue of his estate. She and her husband assigned the life interest, and the fund having been paid into Court under the statute 10 & 11 Vict. c. 96, the assignee petitioned for payment of the dividends during the life of the wife. The petition was not served on the residuary legatees. The Court would not give the costs of the petition out of the capital.

A TESTATOR by his will bequeathed to his trustees a sufficient sum of 3 per cent. consols, to produce an annuity of 100*l.* a year, and directed that this annuity should be paid to Harriet Pegden, for life, and that the capital should, after his death, form a part of his residuary estate. In 1834, the executors transferred a competent sum of 3 per cent. consols into the names of three gentlemen of the name of Brown. In 1835, Harriet Pegden married Mr. Brokenshir; and in 1841, Mr. and Mrs. Brokenshir assigned the annuity to Mr. Peart, the petitioner. The Messrs. Brown having transferred the sum of consols invested in the names into Court, under the 10 & 11 Vict. c. 96; Mr. Peart presented a petition, praying for the payment of the costs of the petition out of the capital, and the payment to himself of the dividends of the remaining capital during the life of Mrs. Brokenshir. No persons interested under the will were served with the petition.

Mr. *Moxon* appeared for the petitioner.

His Honour said, he would not deal with the capital in the absence of the legatees. The only

order he could make would be for the payment of the dividends to the petitioner during the joint lives of Mr. and Mrs. Brokenshir.

Queen's Bench.

(Before the Four Judges.)

The Queen on the prosecution of Bridge v. The Commissioners of the Woods and Forests.

MANDAMUS.—NOTICE TO TAKE LANDS MAY BE EQUIVALENT TO A CONTRACT TO TAKE THEM.

The Commissioners of the Woods and Forests are not, under the 9 & 10 Vict. c. 38, (the Battersea Park Act,) to be considered as directly representing the Queen, and therefore as incapable of having a mandamus issued to them in respect of matters done under the provisions of that act.

A notice given by the commissioners under that act of their intention to take the land of a private individual, entitles him to have compensation assessed for the same, although no further proceeding beyond the notice has been taken.

In this case the defendants had, under the provisions of the 9 & 10 Vict. c. 38, (the Battersea Park Act,) given the prosecutor, in October, 1846, notice of their intention to take certain land of his for the purposes of forming part of the park. They had never since taken any further proceeding in the matter. He applied for compensation under the act, but as they did not grant his application, nor do anything which was necessary for the purpose of ascertaining the amount properly due, he applied for a rule for a mandamus to command them to issue their warrant for assembling a jury to assess that amount.

The *Attorney-General* and Mr. *Welsby* showed cause against the rule. First, The commissioners represent the Queen in this matter, and consequently no mandamus can issue to them, *Re Powell*,^a for their authority under the Battersea Park Act is to take lands "on behalf of her Majesty," and not in any other character. Secondly, the commissioners are not shown to have funds, out of which the damages claimed can be paid; and thirdly, there was no justification for issuing the writ, as the land has not in fact been taken. The mere notice to take the land does not form a ground for claim of damages, for this is a public undertaking and is not like a parliamentary contract made by private individuals for their own benefit, in which case it is conceded, that they may be conclusively bound by a notice under their act. *Blackmore v. The Glamorganshire Canal Company*.^b

Sir *F. Thesiger* in support of the rule. The commissioners here do not represent the Queen as in the case cited. The notice given in this case is a contract, and as the commissioners have, under this statute, an option to exercise their powers within five years, their notice in fact excludes the prosecutor from any power of

^a 1 Q. B. 352.

^b 1 Clark. & Fin. 262.

freely dealing with his land during that period. This is clearly a ground for compensation. If the commissioners have no funds, the payment may not be enforceable, but that is no legal answer to a claim to have the damages ascertained.

Cur. ad. vult.

Lord Denman, C. J. In this case a rule had been obtained for a mandamus to issue to the defendants, commanding them to issue a warrant for the purpose of assembling a jury to assess compensation to the prosecutor for lands which the defendants had given him notice of their intention to take under the provisions of the 9 & 10 Vict. c. 38, for the purpose of forming part of the intended Battersea Park. Several objections were made to this writ. In the first place it was contended that the writ could not issue, because it must be directly addressed to her Majesty, and therefore could not be enforced. We do not think that this objection is well-founded. The Commissioners are public officers invested with certain powers to discharge certain public duties. In exercising these powers they may do that which may affect the rights of private persons who are entitled to compensation, and we think this a proper mode of enforcing it. The case of *R. v. Powell*^c was quoted in support of this first objection, but we do not think that it is applicable, for that case related to the manor of Richmond, and we thought that the Queen was the lady of that manor, though for the purposes of management, and for those purposes alone, it was vested in the Commissioners of Woods and Forests. As the writ, if issued at all, must have been issued to the lady of the manor, and as the Queen herself was that lady, of course the writ could not go. That circumstance does not exist here, and therefore that case does not apply to the present. The second objection to the issuing of this writ was, that the commissioners had merely served the applicant with notice of their intention to take his land, but had not proceeded any further in the matter. The answer given to that objection by the prosecutor's counsel, we think decisive. The notice at once operates on the land, and prevents the owner from freely dealing with his own property. It is therefore, so far as his interests are concerned, equivalent to an actual taking, and in several instances we have held such a result to be sufficient to entitle the owner to compensation. For though such a notice does not actually render the land unsaleable, it prevents the owner from managing it as he might otherwise find it profitable to do. There were other objections raised to the rule, but they are properly matter for consideration on the return of the writ. Rule absolute.

Court of Common Pleas.

Sharp v. Noel and another. Trinity Term, 1848.

REFERENCE TO ARBITRATION.—DELEGATION OF ARBITRATOR'S AUTHORITY.—

1 Q. B. 352.

EFFECT OF WRITTEN AGREEMENT BETWEEN PARTIES.

Pending a reference to arbitration, the arbitrator may, under an agreement in writing between the parties, refer some of the matters in difference to the report of a third party, and afterwards, in pursuance of the terms of the same agreement, adopt the report as conclusive between the parties in respect of those particular matters. The report in such a case comes before the arbitrator in the nature of admissions.

THIS cause, and all matters in difference between the parties, had been referred to arbitration by an order of *nisi prius*, and the submission contained a clause enabling the Court to refer the award back, if necessary, for further consideration. When before the arbitrator, some difficulty arose as to the measurement of certain work done by the plaintiff, and thereupon it was agreed between the attorneys on both sides, with the assent of the arbitrator, by two memorandums of agreement in writing, exhibited in the cause; and dated respectively the 21st of August, 1847, and the 3rd of February, 1848, that the matter of admeasurement in dispute should be referred to an engineer, whose report was to be adopted by the arbitrator as conclusive upon the subject. The engineer accordingly made his report, and the award of the arbitrator in the plaintiff's favour recited the two agreements and the engineer's report, and that the latter had been adopted as conclusive by the arbitrator.

Channell, Serjeant, now moved for a rule to show cause why the award made in the cause should not be set aside, or referred back to the arbitrator, with directions to examine personally the engineer whose report had been adopted. The referring of any of the matters in difference between the parties to the consideration of the engineer was, on the part of the arbitrator, an improper delegation of authority. The engineer should have been examined in the same manner as any of the witnesses, and to enable the arbitrator to receive his report merely as conclusive between the parties, the order of *nisi prius* should have been amended by inserting a power to that effect. *Hopcraft v. Hickman*, 2 Sim. & Stu. 130.

Wilde, C. J. No ground has been shown for setting aside the award in this case, or for referring it back as asked. The parties to the reference by an instrument in writing agree amongst themselves to abide conclusively by the report of the engineer as to certain disputed matters. The arbitrator at the time sanctions that agreement, and the contents of the report afterwards comes before him in the nature of admissions by the respective parties, and was therefore properly receivable as good evidence with respect to the particular subject-matter. There was no improper delegation of the arbitrator's authority, nor did the order of *nisi prius* require any amendment giving a new power to the arbitrator.

The rest of the Court concurred.

Rule refused.

Court of Exchequer.

Chiltern v. London and Croydon Railway Company. June 3, 1848.

COSTS, TAXATION OF.

This Court will not rescind an order of a learned judge that a Master review his taxation, upon the showing that such taxation was not erroneous.

Nor will this Court interfere with the Master's discretion in matters of taxation, so long as it is exercised reasonably.

In Easter Term an application had been made in this Court on behalf of the defendants, for a new trial, on the ground that the damages were excessive. The defendants were unsuccessful, the Court having been equally divided. On taxation of costs, the Master had allowed to the plaintiff briefs to three counsel, and also his costs for showing cause against the rule. An order was subsequently made by *Parke, B.*, that the Master be at liberty to review his taxation.

Sir F. Thesiger now moved for a rule to show cause why the order of *Parke, B.*, should not be rescinded.

In the case of *Archdall v. Perry*, decided in this Court in Michaelmas Term 1845, but which was not reported, the Court held, that in all cases the Master is to use his own discretion, and that it would not interfere to control him so long as that discretion was reasonably exercised. This was a case in which there was a great deal of conflicting argument, in which the law appeared to be involved in considerable

obscurity, and in which three briefs to counsel might therefore be very fairly allowed. On the second point the Master was right. The Court having been divided in opinion, the application for the rule was absolute, and the plaintiff was consequently entitled to costs incurred in showing cause. In a cause in the Common Pleas, not yet reported, in which an application was made by a defendant for a nonsuit, the Court was divided, so that there was no rule, and it was held that the plaintiff was entitled to his costs of showing cause. In this case, if the rule had been made absolute, the plaintiff would have been entitled to his costs, *à fortiori* then is he entitled to them if he succeeds. [*Alderson, B.* In an abortive special case, no costs are allowed.] His learned friend, the Attorney-General, remembers a case in which a juryman ran away, and the trial consequently proved abortive, yet the plaintiff was allowed his costs.

Pollock, C. B. When a trial is interrupted by a plague or tempest or other accident, the party ultimately succeeding gets his costs.

Alderson, B. This Court certainly will not interfere with the discretion of the Master in cases of this sort, so long as that discretion is exercised reasonably. Here the judge's order is quite right as to the costs of showing cause against the rule; as to the other point, the Master may disallow the briefs for three counsel if he thinks proper, but we beg to give him this intimation, that we will not interfere with the exercise of his discretion on the subject.

Per Curiam. There will be no rule.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Common Law.**PLEADINGS.**

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Law of Arbitration, p. 315.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

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Bankruptcy, p. 213.

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Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.

Construction of Statutes, pp. 332, 351.

Law of Property and Conveyancing, p. 370.

Principles of the Common Law and Grounds of Action, pp. 393, 411.]

ABATEMENT.

A plea in abatement for non-joinder of co-contractors, describing some as resident within, and others without, the jurisdiction, is bad, since the passing of 3 & 4 W. 4, c. 42, s. 8. *Gell v. Lord Curzon*, 4 D. & L. 810.

ABATING NUISANCE.

Right of common.—Declaration in trespass alleged that defendant broke and entered plaintiff's dwelling-house in which he and his family were then dwelling and actually present, and, while they were therein, pulled down and demolished the same.

Plea, that defendant was entitled to common of pasture on close *H.* for sheep levant and couchant, &c., as appurtenant to land of which he was the occupier; and that, because the dwelling-house was wrongfully erected on the said close, so that, without breaking and entering, &c., and pulling down and demolishing, the said dwelling-house, he could not enjoy his

said common defendant broke and entered, &c., and pulled down and demolished the dwelling-house, &c., doing no unnecessary damage, &c.

Replication, That the dwelling-house, at the times when, &c., was the dwelling-house of plaintiff, and in the actual occupation of plaintiff and his family, who were actually present in and inhabiting the same, and that defendant, at the times when, &c., with force and arms, and with a strong hand and in a violent manner, broke and entered, &c., and committed the trespasses.

Held, on demurrer to the replication:—

1. That the replication was bad, because it did not add anything material to the complaint in the declaration.

2. That the house being an obstruction to defendant's enjoyment of his common, he might have justified abating so much of it as caused the obstruction, if no person had been therein.

3. But that the justification here was not maintainable, since it appeared by the pleadings that the plaintiff's family were in the house when defendant pulled it down.

4. *Quære*, whether the plea was bad because it did not aver notice to the plaintiff to abate the nuisance himself. *Perry v. Fitzhove*, 8 Q. B. 757.

Cases cited in the judgment: *Penruddock's case*, 5 Rep. 1006; *James v. Hayward*, 1 W. Jones, 221-2; *Rex v. Rosewell*, 2 Salk. 459; *Mason Caesar*, 2 Mod. 65; *Arlett v. Ellis*, 7 B. & C. 346.

ACCORD AND SATISFACTION.

1. *Payment. — Set-off.* — To assumpsit for money paid, &c., defendant pleaded, as to part, that, after the accruing of the causes of action, and before action brought, *B.* was indebted to defendant in a sum exceeding the sum pleaded to, by a decree of a Scotch Court, and was imprisoned to enforce payment; and that, after the accruing, &c., and before action brought, plaintiff was authorized by defendant to receive from *B.* the amount pleaded to, part of the debt from *B.* to defendant, and to retain and appropriate it in full satisfaction and discharge of the cause of action pleaded to, and to receive the residue from *B.*, and hold it on behalf of defendant. That plaintiff, instead of receiving the amount pleaded to in satisfaction and discharge, elected to, and did, at the request of *B.*, and without the knowledge or consent of defendant, receive and take from *B.* a bill of exchange, to the amount of the sum pleaded to, for and on account of that amount, parcel of the debt due from *B.* to defendant, and appropriated and retained the bill to and for the liquidation and discharge of the moneys and causes of action pleaded to; and, without the license, &c., of defendant, authorised and procured the discharge of *B.* from imprisonment without receiving the residue of the debt owing from *B.* to defendant, and without any part of the residue being satisfied or discharged. On special demurrer, objecting that the plea

did not properly show accord and satisfaction, or set-off, *Held*, a bad plea. *Baillie v. Moore*, 8 Q. B. 489.

Case cited in the judgment: *Sard v. Rhodes*, 1 M. & W. 153; 1 Tyr. & Gr. 298.

2. *Promissory note.* — To an action by indorsee against maker of a promissory note, the defendant pleaded, that the note was made by himself and one *A. B.*, his partner, and that, whilst the plaintiff held the note, the defendant and *A. B.* delivered to the plaintiff 19 signed bills of costs, &c., which were referred to taxation; that it was agreed that the balance found to be due from the plaintiff to the defendant and *A. B.* should be applied in part payment of the note, and that the balance of the note, with interest, should be secured by a judgment, payable at certain periods, which had elapsed before the commencement of the suit; that the taxation had not been completed, and that the balance was not ascertained; that the defendant and *A. B.* had always been ready and willing to apply the balance due to the defendant towards the payment of the note, and to secure the balance on the note by a judgment, in accordance with the agreement: *Held*, that the plea was bad on general demurrer. *Carter v. Wormald*, 1 Exch. R. 81.

3. *Executors.* — In an action of debt upon two indentures, whereby the defendant's testator covenanted to pay the plaintiff the respective sums of 1,300*l.* and 700*l.*, with interest, the defendant pleaded, in substance, that the plaintiff was a mortgagee, by two mortgages, of an estate which was insufficient, upon an estimate of its value, to pay the mortgage-money due from the testator; that three other mortgagees were in the same situation, the estate realized to each being less in estimated value than the charge upon it; that the defendants were devisees of the real estate, and executors of the deceased mortgagor: that they had received assets, which, after deducting the costs and expenses payable by them in the first instance, and in preference to the debts due from the testator, and also excepting some furniture, amounted to the deficiency on each mortgage; and thereupon it was agreed between the plaintiff and defendant, and each of the mortgagees, as the common consent of all, and at the request of each, that no suit should be instituted for the assets, and that the said balance of the assets, after deducting the furniture, which should be given to the widow, should be divided rateably between the different mortgagees, and paid to them in satisfaction of the sums due to them over and above the estimated value of the estates; and that all the respective rights and equities of redemption, or other rights of the defendants, as executors and trustees of the mortgaged property, should thenceforth be wholly barred, extinguished, satisfied, and discharged, and the mortgagees should thenceforth become absolute owners, both at law and in equity, of the mortgaged estates, and that the covenants in the declaration should be satisfied and discharged in consideration of the premises.

The plea then averred payment to each of his share of the assets, and that *the several rights and equities of redemption were barred and extinguished.*

Replication, that it was not agreed, nor did the defendants pay to the plaintiff the sum of money in the plea mentioned, upon which issue was joined. The judge at the trial having ruled that the plea could not be proved, except by an agreement in writing. On motion for a new trial, and assuming, for the disposal of that question, that the plea, if proved, would be a good bar: *Held*, that though an agreement to convey an equity of redemption is not binding unless in writing, yet this plea would have been held good on demurrer, even if it had expressly stated that the contract was by parol; for the agreement by the plaintiff to forego the balance of his mortgage above the value of the estate, on receiving his share of the assets, was obligatory on him, and the receipt of that share a satisfaction for the estate, though there was no binding agreement on the defendants to convey the equity of redemption, for the agreement of the other mortgagees to take their shares also was a good consideration for giving up the claim for the residue of the debt against the defendants. *Quære*, whether the plea, if proved, would be a good bar. *Massey v. Johnson*, 1 Exch. R. 241.

See *Bar*, *Pleas in*.

AMENDMENT.

1. A declaration stated that the defendants sold to the plaintiffs 480 tons of coal, subject to the conditions "that they were of a suitable quality to be used in steam vessels, and were adapted for all closed furnace or stove fires, where a strong, steady, and lasting heat was desirable; that they would burn with little or no smoke; would make but a small quantity of ashes; would ignite readily with a good draught; would open and swell out; would not cake and unite like the bituminous coke, and would burn without being stirred." The declaration then alleged a promise by the defendant in the same terms, and stated as breach that the coals were not of a suitable quality to be used in steam vessels, &c., (negating the terms of the proviso). At the trial, it appeared that the plaintiff had purchased coals of the defendant, which were described in the invoice as "steam coals," but which had turned out unfit for the purpose of generating steam; and that prior to the sale of the coals, the defendant had delivered to the plaintiffs a printed paper or advertisement, in which the qualities of the coal were described as stated in the declaration, but the plaintiffs failed to prove that the printed paper formed any part of the contract: *Held*, that the declaration might be amended, by striking out the description of the qualities of the coal, and substituting in lieu thereof a statement that the coal was of fit quality for working steam-engines and generating steam for steam-engines, the defendant being at liberty to plead *de novo*. *Pacific Steam Navigation Company v. Lewis*, 4 D. & L. 691.

Case cited in the judgment: *Chanter v. Hopkins*, 4 M. & W. 399.

2. The defendant, in January, 1843, pleaded not guilty to an indictment for a misdemeanor, removed, at his instance, into this Court by *certiorari*. In Michaelmas Term, 1843, he withdrew his plea, and judgment for the Crown was accordingly entered up against him as of that Term, but sentence was deferred. His clerk in Court, according to the usual practice, made up the plea roll to and inclusive of the *retraxit* of the plea; and in entering the continuances from Term to Term, he omitted to state, after the several days of the month in the jury process, the Term and year of the reign in which the same respectively were, and he entered a *venire facias juratores* as issuing in Hilary Term, 1843, returnable on the 16th of April, which was a Sunday. The prosecutor entered up the judgment, and all the subsequent proceedings down to the delivery of the sentence in Trinity Term, 1845, by which the defendant was sentenced to six months imprisonment; and, in so doing, omitted the Term and year of the reign after the several days of the continuances, and also omitted any continuances at all from Easter Term, 1844, to Trinity Term, 1845. In August, 1845, the Bail in Error Act was passed, upon which the defendant sued out a writ of error, and gave recognizances under that act, assigning for error that the 16th of April was a Sunday; that the Terms and the years in the jury process, and continuances, were omitted after the months; and that the continuances from Easter Term, 1844, to Trinity Term, 1845, were also omitted. He was then discharged from prison, after having undergone two months of his sentence.

The Court made absolute a rule, obtained by the prosecutor in Trinity Term, 1846, pending the writ of error, to issue *venire facias juratores* as of Hilary Term, 1843, returnable in Easter Term, 1843, not on a Sunday; to correct the roll accordingly; and to insert the Terms and years after the months, and the omitted continuances, on the Roll.

Seemle, that the earlier statutes of amendments apply to criminal as well as civil cases. *Reg. v. Gregory*, 4 D. & L. 777.

8 Rep. 156.

See *Slunder*.

ARGUMENTATIVE PLEA.

1. *Denial of acceptance.*—*E.*, one of several persons sued as acceptors of a bill of exchange, pleaded that, at the time of the acceptance, the defendants were partners upon the terms (amongst others) that neither of the partners should, without the consent of the others, draw, indorse, accept, or negotiate any bill of exchange in the name of the firm, otherwise than for *bonâ fide* debts or liabilities of the firm; that the bill was accepted by the other

defendants in the name of the firm, without the knowledge or consent of defendant, *E.*, and in fraud of him, and in violation of the terms of the partnership, and was delivered by the other defendants to the plaintiff for and on account of money due and owing to the plaintiff from the defendant, *J.*, and not for any debt or liability of the firm; of all which the plaintiff had notice at the time of the delivery of the bill to him; that there never was any value or consideration, except as aforesaid, for the acceptance of the bill, or for the payment thereof, by the defendant, *E.*; and that the plaintiff has always held the same without value or consideration. Verification: *Held*, on special demurrer, that the plea was an argumentative denial of the acceptance, and therefore bad. *Grout v. Enthoven*, 1 Exch. R. 382.

2. *General issue*.—*Non assumpsit*.—Assumpsit for the use and occupation of furnished apartments. Plea, that before the defendant held the said apartments by the permission of the plaintiff, he held the same as tenant under a demise from *A. B.*; that while he so held them, *A. B.* assigned all her interest therein to the plaintiff; that the occupation in the declaration mentioned was a continuation of the tenancy under *A. B.*, and that the defendant paid *A. B.* the money in the declaration mentioned, without notice of the assignment, and that defendant never expressly promised to pay the plaintiff the money in the declaration mentioned: *Held*, bad, as amounting to the general issue. *Cook v. Moylan*, 5 D. & L. 101.

ASSAULT AND IMPRISONMENT.

Leave and licence.—To an action of trespass and imprisonment a plea of leave and licence is bad, at all events as far as regards the assault, as amounting to the general issue. *Christopherson v. Beard*, 35 L. O. 413.

AVERMENT OF TENANCY.

De injuriâ.—To trespass for breaking plaintiff's close, &c., defendant pleaded that plaintiff was tenant from year to year of the *locus in quo* to *B.*, the owner of the freehold, subject to a stipulation that *B.*, or his incoming tenant, at any time after the 1st January preceding a 6th April when plaintiff should have received notice to quit on such 6th April, should have liberty to enter and plough; that *B.* gave plaintiff half a year's notice to quit on a 6th April, and afterwards "agreed to let" to defendant, and defendant "agreed to take of" *B.*, the land, and hold the same to defendant as tenant from year to year after the expiration of plaintiff's tenancy; and defendant "thereupon became and was the incoming tenant of *B.*," on the expiration of plaintiff's tenancy; and that defendant afterwards entered, between the 1st January and the said 6th April, to plough, &c., (justifying): *Held*, on demurrer to the replication, a good plea in bar; for that the allegation that defendant became *B.*'s incoming tenant was sufficient on general demurrer, assuming that the plea showed no demise from *B.* to defendant, and that the contract pleaded

required a written instrument (as to which assumptions, *quere*).

The plaintiff, admitting that the *locus in quo* was *B.*'s freehold, replied, *de injuriâ absque residuo causæ*: *Held*, bad, on special demurrer, inasmuch as defendant, in his plea, derived an authority from plaintiff. *Milner v. Jordan*, 8 Q. B. 615.

Case cited in the judgment: *Crogate's case*, 8 Rep. 666.

See *Contract*.

BAR, PLEAS IN.

Accord and satisfaction.—In *indebitatus assumpsit* for money due on account stated, it is not sufficient to plead that, after the accruing of the causes of action in the declaration mentioned, and before the commencement of the suit, defendant and plaintiff accounted together of and concerning the said causes of action, and all other claims and demands then being between plaintiff and defendant, amounting to a large sum, to wit, 1,000*l.*; and that on such accounting, a small sum, to wit, 150*l.*, was then found to be due and owing from defendant to plaintiff, which defendant then promised plaintiff to pay; and afterwards, before commencement of the suit, paid to plaintiff, who accepted it in full satisfaction of the sum due to him from defendant; for such a plea does not show that, at the time of the second accounting relied on, any cross demand by defendant against plaintiff existed, or that, if it existed, it had not been agreed to be given up by defendant in consideration of plaintiff's giving up some other demand of his on defendant, so as to make payment of the balance a satisfaction of the larger sum. *Smith v. Page*, 15 M. & W. 683.

Case cited in the judgment: *Atherley v. Evans*, Sayer's Rep. 269.

BILL OF EXCHANGE.

1. *Time given by holder of bill*.—To an action on a bill of exchange by indorsee against drawer, defendant pleaded that the drawer accepted, and plaintiff afterwards sued drawer on the bill, and, while that suit was pending, in consideration of 2*l.*, agreed with the drawer that plaintiff should stay all further proceedings, and forbear continuing to sue for two months, during which time, plaintiff could have continued further proceedings, which agreement was without the drawer's (now defendant's) consent; and that, in pursuance of the agreement, and without the drawer's consent, plaintiff did stay all further proceedings, and forbear continuing to sue the drawer.

Held, a good plea, though it did not expressly aver that the indorsee could have obtained judgment against the drawer before the time until which he agreed to forbear.

The plaintiff in the present action traversed the agreement set out in the plea; and issue was joined: *Held*, that the drawer supported the issue on his part by merely proving the agreement, and that plaintiff was not entitled to show, in answer, that judgment could not have been obtained earlier than the time until

which he had agreed to forbear. *Isaac v. Daniel*, 8 Q. B. 500.

2. *Circuity of action.—Assumpsit.*—Declaration stated, that certain persons using the name and style of “J. Boulcott and Co.,” by that name and designation drew a bill of exchange on Messrs. G. and E. Woolcott, and inclosed the said bill to defendant, who indorsed it to plaintiffs. Averment, that the drawers did not pay the bill when due. Plea, that the plaintiffs were and are the persons mentioned in the count as using the name and style of “J. Boulcott and Co.,” and as so making the bill by it; and that the indorsement of it to defendant was, in fact, an indorsement by plaintiff in the said name and style of “J. Boulcott and Co.,” and that they so indorsed it to him before he indorsed the same to them, averring that at the time of his so indorsing the bill to plaintiffs, they were liable to pay the amount to him according to their previous indorsement.

Replication, after setting out an agreement between the plaintiffs and defendant, and G. and E. Woolcott, to forbear and give time to them respectively to pay another bill accepted by E. W. and afterwards indorsed to defendant, and by defendant to plaintiffs, till the time for payment of the bill declared on had elapsed; averred, that plaintiffs had forborne to sue accordingly: *Held*, bad, on special demurrer, for departure from the declaration. *Boulcott v. Woolcott*, 16 M. & W. 584.

3. Where the declaration has a count on a bill, and also an *indebitatus* count for the consideration of the bill, *e. g.* money lent: *Semble*, that to prevent the plaintiff from recovering on both counts by due payment into court, the defendant should plead to both counts, that the bill was given on account of the debt in the second count, and then allege payment into court of the amount of the bill and interest. *Tattersall v. Parkinson*, 16 M. & W. 752.

4. A declaration on a bill of exchange followed the form given in the new rules till it came to the breach, where the only allegation was, that “the defendant disregarded his promise and undertaking, and did not pay the said bill,” but omitted to add the words, “when it became due.” Special demurrer on this ground: *Held*, that this demurrer might be set aside as frivolous. *Evans v. Bell*, 35 L. O. 36.

5. Where the words “payable at” a certain place are added to the acceptance of a bill of exchange, they need not be introduced in the declaration. *Padwick v. Baldwin*, 35 L. O. 294.

See *Issuable Plea ; Payment into Court.*

COMMON RIGHT.

See *Abating Nuisance.*

CONDITION PRECEDENT.

Covenant—Declaration.—After stating that plaintiff and defendant had agreed to enter into partnership as surgeons and apothecaries until Jan. 1, 1846, defendant agreeing to pay plaintiff 800*l.*, and to be entitled to all the profits of the business, &c., proceeded to state, that it

was agreed that plaintiff should, after the 1st of January, introduce defendant as his successor in the business, and use his best endeavours to establish him in it; and defendant, in consideration thereof, covenanted to pay plaintiff the further sum of 50*l.* on the 25th of March, 1846, in addition to and beyond the said sum of 800*l.*, &c. Breach, non-payment of the sum of 50*l.* Plea, that after the 1st of January, and before the said 25th of March, plaintiff refused and neglected to introduce defendant as plaintiff’s successor to, &c., and would not use his best endeavours to establish defendant in his business; wherefore defendant refused to pay the 50*l.* verification: *Held*, that the plea was bad, as the introduction of the defendant by plaintiff to his patients was not a condition precedent to the payment of the 50*l.* *Judson v. Bowden*, 1 Exch. R. 162.

CONTRACT.

Averment of request.—Act rendered impossible by other party.—Plaintiff declared upon a contract of defendant, then holding land for a term of years, to assign all his interest to plaintiff on payment, by plaintiff, within seven years from a day named, of 140*l.* Breach, that before the seven years had expired, defendant assigned all his interest to a stranger. On special demurrer, *Held*, 1. That it was not necessary that the declaration should aver tender of money, or request, by plaintiff, or plaintiff’s readiness to accept an assignment.

2. That the breach, as laid, was a good ground of action, the defendant having incapacitated himself from performing the contract, if called on. *Lovelock v. Franklyn*, 8 Q. B. 371.

COUNTS, STRIKING OUT.

Where the plaintiff brought an action for libel, the declaration in which contained several counts, the Court refused to strike out the first count, on the ground that the plaintiff had previously obtained, in the Court of Queen’s Bench, a rule *nisi* for a criminal information for the same libel, as that contained in that count, which rule was, after argument, discharged. *Wakley v. Cooke*, 4 D. & L. 702.

DEBT.

Sums laid in declaration.—Debt for money had and received, money lent, and on an account stated, to the amount of 19*l.* 10*s.* Plea of set-off of 50*l.* The particulars of demand claimed 6*l.* 10*s.* for money lent. At the trial, the defendant merely proved a set-off of 6*l.* 10*s.*: *Held*, that he was not entitled to the verdict. *Roche v. Chapman*, 1 Exch. R. 10.

DECLARATION.

1. A declaration stated that the defendant held a dwelling-house as tenant thereof to the plaintiffs, under a demise thereof, made by the plaintiffs; by reason of which tenancy, it became and was the duty of the defendant not to permit waste; it then alleged as a breach, that the defendant permitted the house to be waste and ruinous: *Held*, bad, on general demurrer, as it was consistent with every allegation that

the defendant was tenant-at-will only. *Harnett v. Moitland*, 4 D. & L. 545.

2. Though, in an action of libel, prefatory averments may be necessary to explain the matter alleged to be libellous, it is enough to state in the declaration that the publication was "of and concerning" such matter. *O'Brien v. Clement*, 4 D. & L. 563.

3. In debt for penalties under the 3 and 4 W. 4, c. 15, s. 2, for representing a pantomime, of which the plaintiff was the author, without his license, at a place of dramatic entertainment, upon *nil debit*, by statute pleaded, it was *held*, that the plaintiff's undertaking to give material evidence in Middlesex, was fulfilled by proof of an offer to sell the pantomime in Middlesex, by the plaintiff's agent acting under his directions.

A pantomime is a "dramatic entertainment" within the 3 & 4 W. 4, c. 15.

It need not be shown that the defendant knew the work to belong to the plaintiff when he illegally represented it.

The offence is sufficiently described, if alleged in the language of the act of parliament. *Lee v. Simpson*, 4 D. & L. 666.

DE INJURIA.

See *Averment of Tenancy ; Fraud ; Replication ; Usury*.

DEMURRER.

Frivolous.—Reg. Gen., Hil. T., 4 W. 4, s. 2, which empowers the Court or judge to set aside a demurrer as frivolous, applies equally to the case of a plaintiff demurring as a defendant.

A frivolous demurrer is not an irregularity, but an improper proceeding, which the Court, in its discretion, may set aside at any time.

Therefore, where the defendants had obtained orders twice for time to join in demurrer: *Held*, that they did not thereby waive their right to apply to the Court to set aside the demurrer as frivolous. *Cutts v. Surridge*, 4 D. & L. 642.

DOUBLE PLEA.

To a declaration on a bill of exchange, the defendant pleaded the delivery of a promissory note payable on demand, made by himself to the plaintiff, "for or on account of" the note in the declaration mentioned, and all causes of action in respect thereof; and that subsequently the defendant gave a warrant of attorney, and the plaintiff accepted it, in full satisfaction of the said last-mentioned promissory note, and of all causes of action in respect thereof, and of all causes of action in the declaration mentioned: *Held*, on special demurrer, that the plea was not double. *Fearne v. Cochrane*, 4 D. & L. 797.

Cases cited in the judgment: *Price v. Price*, 4 D. & L. 537; 16 M. & W. 232; *Kearlake v. Morgan*, 5 T. R. 513.

DUPLICITY.

See *Infancy ; Sci. fa. ; Usury*.

EXECUTORS.

See *Accord and Satisfaction*, 3.

FOREST RIGHT.

An information by the Attorney-General stated that the Queen was, and still is, seised in her demesne as of fee, in right of her crown, of and in Waltham Forest; and that she and all her ancestors, kings and queens of England, have continually held and enjoyed the said forest, and the game of wild beasts, and fowls of chase, and warren, coming and arising of and from the said forest, and all rights, profits, privileges, liberties, and franchises appertaining thereto, without any disturbance, title, or claim made or pretended thereto, &c.; that the defendant, on divers days, unlawfully erected a high fence, and dug a deep ditch in and upon the soil of the said forest, to wit, upon and around 100 acres of land, being parcel of and within the said forest, and therewith inclosed the said 100 acres of the said forest, and kept and continued the said fence, &c., whereby the Queen could not have and enjoy the said forest, and the said game, and the said rights, profits, &c., in as full and ample a manner as she of right ought to have and enjoy the same, to the great injury and disturbance of the Queen in the said forest, to the great damage and destruction of the vert and venison of and in the said forest, to the disinherison of the Queen in the premises. Plea, that the said place in which, &c., was not, nor was any part thereof, parcel of, or within the supposed forest, *modo et formâ*: *Held*, on demurrer, that the plea was good, since this was not an information of intrusion into lands of the crown, but an information, in the nature of an action of trespass on the case, for the injury to the incorporeal right of forest, by interfering with the game. *Attorney-General v. Hallett*, 1 Exch. R. 211.

FRAUD.

De injuria.—To a declaration by the indorsee against the drawer of a promissory note, the defendant pleaded that the payee was indebted to him, and that after the note became due it was agreed between the payee and the plaintiff, for the purpose of defeating the defendant's right to set-off as against the payee, that the payee should indorse the note to the plaintiff, and that the note was so indorsed, and that the plaintiff was suing for the use and benefit of the payee and for him alone. Replication *de injuriâ*. Special demurrer. A judge at chambers set aside this demurrer as frivolous: *Held*, that the demurrer was frivolous, for that where a plea of set-off sets up fraud as an answer to the action *de injuriâ* is a proper replication. *Tolson v. Notley*, 35 L. O. 294.

See *Usury*.

INFANCY.

Duplicity.—To a declaration on a bill of exchange against the defendant as acceptor, he pleaded that he accepted the bill while he was an infant, it being without date at the time of the acceptance; that the plaintiff afterwards altered the bill by writing a date thereon; and that there never was any license or ratification

by the defendant to such alteration, after he attained the age of 21 years; *Held*, on special demurrer, that the plea was not bad for duplicity. *Harrison v. Cotgreave*, 5 D. & L. 169.

ISSUABLE PLEA.

Judgment, irregularity.—1. To a declaration containing a count by indorsee against indorser of a bill of exchange, and account on an account stated, the defendant, who was under terms of pleading*issuably, pleaded thus:—“And the defendant, by, &c., says, that he did not indorse the said bill in manner and form as in the first count mentioned; and as to the last count, that he did not promise.” The plaintiff having signed judgment, on the ground that the first plea in terms applied to the whole declaration, and was therefore non-issuable, the Court set aside the judgment for irregularity. *Bousfield v. Edge*, 1 Exch. R. 89.

2. *Bill of exchange.*—To an action on a bill of exchange for 20*l.*, drawn by *J. L.*, and indorsed to the plaintiffs, and accepted by the defendant, the defendant pleaded, that before and at the time of the indorsement, *J. L.* was indebted in 1*l.* 13*s.* 1*d.* to the defendant, and that *J. L.* held the bill on the terms that the sum so due should be set off against the amount of the bill; and that *J. L.*, in fraud of the defendant, and in colleague with the plaintiffs, indorsed the bill to them, who sued as agents merely of *J. L.*: *Held*, that the plea was not issuable. *Mayhew v. Blofield*, 1 Exch. R. 469.

3. To a declaration containing a count by indorsee against indorser of a bill of exchange, and also an account stated, a defendant, under terms of pleading issuably, pleaded thus:—“And the defendant, by, &c., says, that he did not indorse the bill in manner and form as in the first count mentioned, &c.; and as to the last count, the defendant says that he did not promise, &c. The plaintiff having treated the first plea as non-issuable, and signed judgment, the Court set aside the judgment for irregularity. *Bousfield v. Edge*, 5 D. & L. 99.

4. *Trespass for taking goods.* Plea, that the mayor, aldermen, and burgesses of the city of *O*, had, from time immemorial, been seised in fee of certain streets and lanes within the city, and also of the toll of twopence for every cart coming upon, and passing over, any of those streets or lanes, with certain exceptions; and that they were entitled to the right of distress for such toll; and because the plaintiff's cart, laden with merchandise not excepted, came upon, and passed over, one of the streets on the days in question, the defendants, as bailiffs of the corporation, distrained for the toll, after demand made. Replication, *de injuriâ*.

The defendants being under terms to re-join issuably, specially demurred for duplicity to the above replication: *Held*, that the plaintiff was entitled to sign judgment, as for want of a rejoinder: *Held*, on motion to set aside the judgment so signed, that the replication was good on general demurrer.

Semble, that it would have been good even on special demurrer. *Tagg v. Simmonds*, 4 D. & L. 582.

Cases cited in the judgment: *Bowler v. Nicholson*, 12 A. & E. 341; *Parker v. Riley*, 3 M. & W. 230.

JOINDER OF PARTY.

Assumpsit. The declaration stated, that plaintiff and *A. B.* carried on business in co-partnership, and in consideration that plaintiff and *A. B.* would sell defendant the business, and would become trustees for him in respect of all debts, &c., due to plaintiff and *A. B.* in respect thereof, defendant promised plaintiff to pay him all the money he had advanced in respect of the co-partnership, and for which it was accountable to plaintiff. Averment, that plaintiff and *A. B.* did sell the business to defendant, and that, at the time of the promise, plaintiff had advanced a certain sum. Breach, non-payment thereof: *Held*, on motion in arrest of judgment, that it was not necessary to join *A. B.* as a co-plaintiff, and that the declaration was good. *Jones v. Robinson*, 1 Exch. R. 454.

JOINT-STOCK COMPANY.

Allottee of shares.—Abandonment of company.—A declaration stated that the plaintiffs agreed with other persons to endeavour to form a joint-stock company for making a railway, that a deposit of 2*l.* 2*s.* per share was to be paid by the allottees, that the plaintiffs formed the committee of management, and allotted to the defendant 25 shares, upon the terms that 2*l.* 2*s.* per share should be paid by him on or before the 9th December, 1845, to the account of the company, to one of certain bankers, of all which premises the defendant, on, &c., had notice. The declaration then averred mutual promises, and alleged that although the plaintiffs were always ready and willing to fulfil all things on their parts, and although the 9th day of December had elapsed, yet the defendant had not paid the deposit of 2*l.* 2*s.* per share.

The defendant pleaded, 4thly, that the plaintiffs were not always ready and willing to perform the terms in the declaration mentioned; 5thly, that the defendant had not notice of the said several premises in the declaration mentioned; 6thly, that before the commencement of the suit, the plaintiffs and the company agreed, without the consent of the defendant, that the endeavours to establish the company should be, and the same were, abandoned, and the shares allotted to the defendant became utterly worthless: *Held*, on special demurrer, that the pleas were bad, and the declaration good. *Duke v. Dive*, 1 Exch. R. 36.

JURISDICTION.

See *Plea to Jurisdiction*.

JUSTIFICATION.

See *Trespass*.

[The remainder of this Section will be given in our next Number.]

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 30, 1848.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

THE NEW ACT FOR THE PROTECTION OF JUSTICES.

11 & 12 VICT. c. 44.

THE two preceding numbers have contained a carefully abridged summary of the provisions of the acts introduced by the Attorney-General, for facilitating and improving the Administration of Justice by Magistrates out of Sessions. The series would be incomplete if we omitted the third act, which is entitled,—“An Act to protect Justices of the Peace from vexatious Actions for Acts done by them in the execution of their Office,” which we are now enabled to publish without any material abridgement, (*vide post*, p. 442).

During the progress of this measure through parliament, (vol. 35, p. 419, *ante*.) whilst expressing our commendation of the general principle involved in it, we ventured to express some doubt whether certain of the contemplated enactments did not unnecessarily restrict the rights of parties whose liberty, property, or character might be injuriously affected by the proceedings before magistrates, and whether their tendency might not be to diminish that salutary sense of responsibility which should accompany the exercise of duties so serious and important as those which devolve upon justices of the peace. The bill underwent considerable alterations in committee, but not of a nature demanding any qualification of the suggestions then thrown out, and we shall continue to consider the provisions alluded to of questionable expediency, until a suffi-

cient experience of their operation proves our apprehensions to be unfounded.

It seems to have been considered as the bill proceeded through parliament—and no doubt with sufficient reason—that certain actions which this measure proposes to prohibit or regulate, might be commenced in the County Courts, rather than in one of the Superior Courts at Westminster; and to meet this contingency amendments were introduced in three different sections, viz., the 10th, 12th, and 14th sections. The 10th section, after enacting that such actions, when commenced in the County Court, “must be brought in the Court within the district of which the act complained of was committed,” contains a proviso, introducing a novel principle, which can scarcely fail to produce some difficulties in practice. The language of the proviso is, “that no action shall be brought in any such County Court against a justice of the peace, for anything done by him in the execution of his office, *if such justice shall object thereto*; and if, within six days after being served with a summons in any such action, such justice, or his attorney or agent, shall give a written notice to the plaintiff in such action that *he objects to being sued in such County Court* for such cause of action, all proceedings afterwards had in such County Court in any such action shall be null and void.” As we understand this proviso, if a justice is informed by any means, that a plaintiff proposes to proceed against him in the County Court, he may object to the tribunal in the

first instance before the plaint is entered, and then no such plaint must be entered; or, if the plaint is entered in the County Court, the justice has six days after service of the County Court summons, to determine whether he elects that the cause should be proceeded with in that Court or not; and if he should decide against the tribunal selected by the plaintiff, the proceedings already taken are unavailing, and the plaintiff has no means of recovering the expenses he has already incurred. As the largest amount which a plaintiff can possibly recover in the County Court in an action of tort is 5*l.*; the loss of the expenses antecedent to the declaration of the defendant's option, repudiating the jurisdiction, can scarcely be considered insignificant to the humble suitor. It appears to admit of some doubt, however, whether the exercise of the option on the part of the justice may not in certain cases deprive the plaintiff of his remedy altogether, whatever may be the merits of his action. The sixth section, it will be observed, limits the time for bringing actions against justices to six calendar months, whilst the following section provides, that no such action shall be commenced until one calendar month at least after notice of action has been served, in which notice "the cause of action, and the Court in which the same is intended to be brought, shall be clearly and explicitly stated." Let us suppose that at the end of four months after the act complained of has been committed the aggrieved party serves a notice that he intends to proceed at the expiration of one calendar month in the County Court, and hearing nothing from the justice, he does proceed by entering his plaint and issuing and serving a summons, and that the justice, within the six days specified in the proviso already cited, declines to be judged by the learned judge of the County Court,—what then? The plaintiff, unless he abandon his suit, must seek his remedy by issuing a writ of summons in one of the Superior Courts. To enable him to maintain such an action, however, he is required to give one calendar month's notice, and if such notice be given after the proceedings in the County Court have been prematurely stopped by the refusal of the defendant to submit his case to that tribunal, the six months mentioned in the eighth section will have expired, and the plaintiff's remedy be effectually barred.

The objection to the 7th section, which provides, that where any action is brought contrary to the provisions of this act, a

judge of the Court" shall, upon the application of the defendant, set aside the proceedings with or without costs, is aggravated by the consideration that this power may be exercised, not only by a single judge of the Superior Courts sitting in private, but also by a judge of the County Court. Where an action is brought against a magistrate, founded on any real or supposed acts of oppression, the proceedings should only be set aside after a full discussion in open Court. The private decision of a single judge cannot in such a case be deemed satisfactory; and to invest the judges individually with such a jurisdiction is to impose on them unnecessarily an unfair degree of responsibility. When the act for the further amendment of the administration of criminal justice, (11 & 12 Vict. c. 78, printed *ante*, p. 403), was under the consideration of the House of Lords, the learned Lord Chief Justice of the Queen's Bench energetically protested against giving the Courts of Quarter Sessions the power of reserving questions of law, which might arise on criminal trials, for the consideration of the Superior Courts, on the ground that the judges of the Superior Courts were already oppressed by the number and variety of the questions submitted for their decision. We apprehend, however, that the business of the Court of Queen's Bench, in which the heaviest arrear already exists, will be materially increased by the course of proceeding pointed out by the 5th section of the act now under consideration, as well as by the provision which requires that, in certain cases, a conviction or order should be quashed preliminary to any action being brought against the justice by whom such conviction or order was made. In any case where a justice entertains a doubt as to the legality of any act he is called upon to perform in his magisterial capacity, he has only to decline to perform the act, and the Court of Queen's Bench may then be called upon to consider and pronounce upon the legality of the act which the justice has declined to perform, and, if it deems fit, may require the justice by rule of Court to do the act he has previously refused to do. It would appear to be the intention of the legislature that the Court of Queen's Bench should only interfere where the justice has declined to act in consequence of doubts as to the legality of the act, but the clause does not specifically point out by what means the Court is to be informed as to the grounds of the justice's refusal. We presume it is intended that this information should be

communicated to the Court by affidavit of the magistrate in answer to the rule. Much will, no doubt, depend upon the principles of construction and the course of procedure adopted by the Court of Queen's Bench under this section; but we can readily conceive that this enactment may, at no distant period, operate rather as a hardship than a protection to the class it was peculiarly designed to favour and benefit.

We shall only add, that the Justices' Protection Act, like other acts already alluded to, (11 & 12 Vict. cc. 42 & 43,) comes into operation on Monday next, the 2nd October.

TRANSFER OF LANDED PROPERTY IN IRELAND.

THE numerous acts passed in the Session of Parliament which has lately terminated, and in which the legal profession may be supposed to be peculiarly interested, have been or shortly will be submitted to our readers in every instance in which the enactments extend to the United Kingdom. In addition to these, we may notice an act the operation of which is expressly confined to the sister kingdom, and which is entitled "An Act to facilitate the Transfer of landed Property in Ireland." This measure was introduced by Sir William Somerville, the Irish Secretary, and contains some provisions of great practical importance in reference to the system of registration which has been for some years established in that portion of the United Kingdom.

The alterations now introduced recognize the principle that the registry should not only disclose the incumbrances to which an estate has been subjected, but also by what means, if any, those incumbrances have been discharged or satisfied. The leading provisions of the statute may be thus enumerated:—

"1st. That no bond or recognizance to the crown of record in Ireland, which shall be more than 20 years old from its date, shall affect any lands, &c. as to purchasers, until and unless registered.

"2nd. No judgment, order, decree, &c. can hereafter be registered until a certificate of its existence has been lodged with the registrar.

"3rd. Upon production to the registrar of judgment of a certificate of satisfaction of a judgment, decree, rule, or order, &c., he shall enter a memorandum thereof upon the entry of registry, and grant certificates, as well of such satisfaction as of the registration of a judgment, rule, order, &c.

"4th. The Lords of the Treasury are empowered to alter the forms of the books and indexes as well in the office for registry of

deeds, as also in that of the registrar of judgments."

We are informed that this measure is regarded favourably by the profession in Ireland, as affording great practical facilities in the sale or mortgage of landed property in that country. Its beneficial operation, however, will necessarily be limited, if not altogether suspended, until that part of the United Kingdom is restored to such a state of tranquillity as will establish some degree of confidence on the part of those who are disposed to invest capital upon landed security in Ireland.

THE BAR AND THE ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—Throughout the long period that you have conducted the *Legal Observer*, I have noticed the care and anxiety with which you have exercised your vocation whenever the interests of the profession, or any of its departments, were concerned. It has appeared to me, that, whilst the materials of your publication have been chiefly collected for the use of attorneys and solicitors, you have invariably sought to promote the interest of the *entire profession*, and to unite all its branches in one friendly feeling. You have not been wanting in remonstrances or animadversions where members either of the bench or the bar—from the Lord Chancellor to the humblest Commissioner—have overstepped the course of their duty, to the prejudice either of the public or the profession in general. On the other hand, you have exposed and censured all serious instances of the malpractice or misconduct of attorneys, without being too officious in spying out "every nice offence" or inflicting too severe a comment.

As a practitioner of many years' standing, and strongly attached to my profession, I have watched, with no common interest, the progress of law reform and the changes which have taken place to the injury alike of the public and the profession. Many, if not all, of these mutations in our law and practice have affected equally the Barrister and the Attorney. Had the two bodies acted in unison—had the comparatively large and powerful portion of the bar who are in Parliament, aided by their influential brethren in general, joined with the attorneys and solicitors throughout the country, these evils, of which both branches now complain, might have been largely mitigated, if not absolutely prevented.

Of late I have observed, as well from my

own personal experience as from the constant attention which has been paid to professional interests in your pages, that there is a growing opinion of dissatisfaction amongst the members of my branch of the profession, with regard to the conduct of the bar, and especially that part of it which has attained the rank of legislators. This feeling is certainly very general. There are some exceptions of attorneys in good practice, who are absorbed in their business, and bestow, little if any, attention on matters which affect the status, the character, or interests of the profession. The encroachments on the rights of their humbler brethren affect not them. For aught they heed, all the honours and public appointments of the profession may be grasped by barristers of seven years' standing. But I am glad to say that this class is comparatively small in number, and that the general body is fully sensible of the true state of the profession. They perceive that the course of modern legislation evidently tends to destroy the influence which the attorneys possessed, and which they were peculiarly entitled to exercise in their several localities. They formerly filled all the public clerkships, and many other offices of trust and honour, for which their legal education and excellent habits of business have always peculiarly qualified them. The public service, indeed, cannot fail to suffer, if they are superseded, as in too many instances has already been the case, and "worse remains behind," if they do not actively bestir themselves. The numerous corps of barristers in parliament, and the still more numerous class of their connexions and friends in both Houses, will, in this "piping time of peace," naturally favour their own influential order. Hence the execution of official duties and administrative powers conferred by recent statutes are almost entirely confided to the members of the bar.

Then comes the question, *what is to be done?* What are the specific measures which should be adopted? Can the profession be re-organized, and those exclusive rules altered which separate the two branches so far apart that the interests of each conflicts with the other? Can a change be effected by which the respective departments of the profession may each possess its own appropriate position,—whether judicial or administrative,—without infringing on the just claims of the other? Some recent circumstances induce me to apprehend that if a proper arrange-

ment be not effected, a conflict will take place which may be injurious to both parties, and afford much malicious rejoicing to their common enemies. Now it appears to me that, however difficult the negotiation may be, it ought to be attempted.

It would of course come with more effect, and the greater grace, if the removal of the grievances originated with the superior rank. It could be readily brought about by an intimation from a few leading members of the Bar that they were willing to take into consideration the grievances complained of, with a view to their redress, and every due mark of respect would be paid to the suggestion. If there were the *will*, it would be easy to find the *way*. For instance, in several families there are members in all branches of the profession: the head of the family on the bench,—brothers or sons practising, some as barristers, and others as attorneys and solicitors. What could be easier than to bring about a good understanding amongst persons having one common interest—seeking to effect an object right and just in itself, as well towards the whole profession, as the public in general?

In another letter, if this be favourably entertained, I purpose to set forth the principal points of difference which I think might be satisfactorily arranged. It is manifest, from various indications, that the attorneys and solicitors will not submit any longer to the subversion of their rights and the unjust encroachment on their interests and station in the profession. They are now banded together to an extent that must sooner or later prevail. Unless some injudicious friends, or concealed enemies, disunite them or mar the fair prospect which is before them, they cannot fail to achieve the main objects in view.

The profession is largely indebted to your work for the valuable support it has given to the New Association of Town and Country Solicitors, and for the pains you have taken to explain its objects and prevent the injury which might have arisen, had the notion prevailed that there was any opposition or rivalry between the Incorporated Law Society and the Metropolitan and Provincial Association. The great object, as you have often pointed out, will be to bring into operation the power and influence of the *country solicitors* in conjunction with those of London; and there is no doubt that the new society is calculated to enrol a much larger number than could be expected in the Incorporated Society. A small

annual subscription is sufficient for the membership of the one, a considerable admission-fee as well as subscription is necessary for the other. To the London members this pecuniary advance is compensated by the advantages of an extensive library and useful lectures, by the collection of daily information for their professional use, and the convenience of a place of resort always accessible to the members and their articled clerks. On account of their distant residence, these advantages are not available to the provincial profession, and hence the necessity of the new association.

If no overture should in any way be made on the part of the bar, I would venture to recommend that the solicitors, through the medium of their established societies, should state their grievances to the heads of the bar, and suggest a plan for redressing them. If they should not be properly listened to, or if the result be unsatisfactory, they can then take their own course; and probably a more successful one, after conciliatory means have been first adopted.

ATTORNATUS.

20 Sept. 1848.

[We shall be glad to receive the opinions of our readers on this important subject.—ED.]

NOTICES OF NEW BOOKS.

A Manual of the Law of Evidence on the Trial of Actions and other Proceedings in the New County Courts. By JAMES EDWARD DAVIS, Esq., Barrister-at-Law. London: H. Butterworth. 1848. Pp. 319.

THE Law of Evidence is for the most part the same in actions in the Inferior, as in the Superior Courts, with this difference—that in the County Courts the parties to the suits and their wives are rendered competent witnesses; but a work like the present volume appeared to be requisite as a convenient volume in lieu of the ponderous works of Selwyn, Starkie, and Phillips.

In the Superior Courts, as Mr. Davis observes, the evidence depends on the pleadings, and a considerable part of the learned Treatises on Evidence is devoted to the consideration of what facts must or may be proved under certain pleas. In the County Courts this abstruse part of the subject is avoided; but in the absence of pleadings, the particular facts necessary to be proved manifestly require great attention. The subdivisions in the Superior Courts of

rights and remedies into actions of assumpsit, debt, &c., is inapplicable to the County Courts; but Mr. Davis notices that this subdivision is nevertheless retained in most, if not in all the treatises on the practice of these Courts:—an error, he says, probably arising from “the language of the act of parliament which gives jurisdiction to the County Courts in *all pleas of personal actions*, to a certain amount,—meaning, however, that these Courts shall have jurisdiction in all cases which in the Superior Courts are the subject of actions of that class.”

By the rules of practice in these Courts, as settled by the judges, actions are divided into two classes:—actions on *contracts*, and actions for *torts*. There are, however, other subjects within the jurisdiction of the County Courts, as replevin, possession of tenements, and cases of interpleader. Mr. Davis, therefore, has divided his treatise under the following heads:—

The 1st part treats of actions on contracts, viz.,—the sale of goods, &c.; the use of goods; the occupation of premises; actions relating to personal services; contracts relating to money and securities for money.

The 2nd part comprises *torts*, including injuries to the person, and injuries to property.

The 3rd part relates to actions of replevin; proceedings to recover possession of tenements, and interpleader claims.

Such is the scope of this Hand-Book of Evidence for the County Courts. The materials have been well arranged and concisely stated, and we doubt not it will be found a very useful book for the practitioner.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the *present* Session of Parliament, printed in this and the last volume of the *Legal Observer*, are as follow:—

Extending Time for making Railways, 35 L. O. 204.

Regulating the Queen's Prison, ib. 555.

North American Passengers, ib. 581.

Crown and Government Security, ib. 600.

Oaths in Chancery, p. 7, *ante*.

Stamp Duties Assimilation, p. 8, *ante*.

Trial of Controverted Elections, p. 23, *ante*.

Removal of Aliens, p. 182, *ante*.

Annual Indemnity, p. 221, *ante*.

Suspension of the Habeas Corpus Act (Ireland), p. 280, *ante*.

Poor Removal, p. 298, *ante*.

Commons Inclosure, p. 324, *ante*.

Game Certificates, p. 341, *ante*.

Joint-Stock Companies, p. 357.

Law of Elections, p. 377.

Law of Bankruptcy, p. 377.

Administration of Justice by Magistrates out of Sessions, p. 397.

Administration of Criminal Law, p. 403.

Release of Bankrupts, p. 423.

Evidence of Proclamations of Fines, p. 424.

THE PROTECTION OF JUSTICES ACT.

11 & 12 VICT. c. 44.

An Act to protect Justices of the Peace from vexatious Actions for Acts done by them in execution of their Office. [14th Aug., 1848.]

1. For an act by a justice of peace within his jurisdiction the action shall be on the case, and it shall be alleged to have been done maliciously, and without probable cause.—Whereas it is expedient to protect justices of the peace in the execution of their duty: Be it therefore enacted, That every action hereafter to be brought against any justice of the peace for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously, and without reasonable and probable cause; and if at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant.

2. For an act done by him without jurisdiction, or exceeding his jurisdiction, an action may be maintained without such allegation; but not for an act done under a conviction or order, until after such conviction or order shall have been quashed; nor for an act done under a warrant to compel appearance, if a summons were previously served and not obeyed.—That for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this act, without making any allegation in his declaration that the act complained of was done maliciously, and without reasonable and probable cause: Provided nevertheless, that no such action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed, either upon appeal or upon application to her Majesty's Court of Queen's Bench; nor shall any such action be

brought for anything done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless, if a summons were issued previously to such warrant, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for anything done under such warrant.

3. If one justice make a conviction or order, and another grant a warrant upon it, the action must be brought against the former, not the latter, for a defect in the conviction or order.—That where a conviction or order shall be made by one or more justice or justices of the peace, and a warrant of distress or of commitment shall be granted thereon by some other justice of the peace *bonâ fide* and without collusion, no action shall be brought against the justice who so granted such warrant by reason of any defect in such conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any) shall be brought against the justice or justices who made such conviction or order.

4. No action for issuing a distress warrant for poor rate by reason of any defect or that the party is not rateable.—No action against justices for the manner in which they exercise a discretionary power.—That where any poor rate shall be made, allowed, and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice or justices who shall have granted such warrant by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein; and that in all cases where a discretionary power shall be given to a justice of the peace by any act or acts of parliament, no action shall be brought against such justice for or by reason of the manner in which he shall have exercised his discretion in the execution of any such power.

5. If a justice refuse to do an act, the Court of Queen's Bench may by rule order him to do it, and no action shall be brought against him for doing it.—And whereas it would conduce to the advancement of justice, and render more effective and certain the performance of the duties of justices, and give them protection in the performance of the same, if some simple means, not attended with much expense, were devised by which the legality of any act to be done by such justices might be considered and adjudged by a Court of competent jurisdiction, and such justice enabled and directed to perform it without risk of any action or other pro-

ceeding being brought or had against him; be it therefore enacted, That in all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done to apply to her Majesty's Court of Queen's Bench, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also the party to be affected by such act to show cause why such act should not be done; and if after due service of such rule good cause shall not be shown against it, the said Court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet; and the said justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid.

6. *After conviction or order confirmed on appeal, no action for anything done under a warrant upon it.*—That in all cases where a warrant of distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order which, either before or after the granting of such warrant, shall have been or shall be confirmed upon appeal, no action shall be brought against such justice who so granted such warrant for anything which may have been done under the same by reason of any defect in such conviction or order.

7. *If an action be brought where by this act it is prohibited, a judge may set aside the proceedings.*—That in all cases where by this act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought it shall be lawful for a judge of the Court in which the same shall be brought, upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet.

8. *Limitation of action.*—That no action shall be brought against any justice of the peace for any thing done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed.

9. *Notice of action.*—That no such action shall be commenced against any such justice of the peace until one calendar month at least after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action, and the Court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue, and also the name and place of abode, or of business of the said attorney or agent, if such

notice have been served by such attorney or agent.

10. *Venue.*—*Defendant may plead the general issue, any special matter, &c., in evidence.*—That in every such action the venue shall be laid in the county where the act complained of was committed, or in actions in the County Court the action must be brought in the Court within the district of which the act complained of was committed; and the defendant shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse, or justification in evidence under such plea, at the trial of such action: Provided always, that no action shall be brought in any such County Court against a justice of the peace for any thing done by him in the execution of his office if such justice shall object thereto; and if within six days after being served with a summons in any such action such justice, or his attorney or agent, shall give a written notice to the plaintiff in such action that he objects to being sued in such County Court for such cause of action, all proceedings afterwards had in such County Court in any such action shall be null and void.

11. *Tender, and payment of money into Court.*—That in every such case after notice of action shall be so given as aforesaid, and before such action shall be commenced, such justice to whom such notice shall be given may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit as amends for the injury complained of in such notice; and after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender, or in addition to such tender, shall be at liberty to pay into Court such sum of money as he may think fit, and which said tender and payment of money into Court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue aforesaid; and if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into Court, or beyond the sums so tendered and paid into Court, then they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into Court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of Court to him, and the residue, if any, shall be paid to the plaintiff; or if, where money is so paid into Court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the Court in which such action shall be brought an order that such money shall be paid out of Court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause.

12. *In what cases costs may be awarded for defendant.*—That if at the trial of any such

action the plaintiff shall not prove that such action was brought within the time herein-before limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or (when such plaintiff shall sue in the County Court) within the district for which such Court is holden, then and in every such case such plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

13. *Damages.*—That in all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of 2*d.* as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for nonpayment of the sum he was so ordered to pay.

14. *Costs.*—That if the plaintiff in any such action shall recover a verdict, or the defendant shall allow judgment to pass against him by default, such plaintiff shall be entitled to costs in such manner as if this act had not been passed; or if in such case it be stated in the declaration, or in the summons and particulars in the County Court if he sue in that Court, that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between attorney and client; and in every action against a justice of the peace for anything done by him in the execution of his office, the defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between attorney and client.

15. That this act shall extend only to England and Wales and the town of Berwick-upon-Tweed.

16. That this act shall commence and take effect on the 2nd October, 1848.

17. After commencement of this act the following statutes or parts of statutes repealed. 7 Jac. 1, c. 5; 21 Jac. 1, c. 12, s. 5; 24 G. 2, c. 44, ss. 1, 2, and part of s. 8; 43 G. 3, c. 141.

18. That this act shall apply for the protection of all persons for anything done in the execution of their office, in all cases in which,

by the provisions of any act or acts of parliament, the several statutes or part of statutes herein-before mentioned and by this act repealed would have been applicable if this act had not been passed.

19. Act may be amended, &c.

PROPOSED PARLIAMENTARY CHARGES OF SOLICITORS, &c.

THE following is a Copy of the Revised Draft of a proposed List of Charges for Parliamentary Agents, Attorneys, Solicitors, and others. Prepared by Mr. Speaker, in pursuance of "The House of Commons Costs Taxation Act, 1847." 10 & 11 Vict. c. 69:

I.—ATTENDANCES.

AT THE HOUSE OF COMMONS.

At each of the following proceedings in the House upon the petition and bill; viz.—

Promoters :

| | £ | s. | d. |
|---|---|----|----|
| Attending to get petition for bill presented and petition referred to Standing Orders Committee, or bill ordered, or other proceeding thereon | 1 | 1 | 0 |
| First reading of the bill | 1 | 1 | 0 |
| Second reading | 1 | 1 | 0* |
| Report, when acting as parliamentary agent | 1 | 1 | 0 |
| Consideration of report | 1 | 1 | 0* |
| Third reading | 1 | 1 | 0* |
| Consideration of Lords' amendments, (when any such attendance is necessary) | 1 | 1 | 0 |

The above fees will include the attendances upon members at the house, who are to present petitions, or to move any stage of the bill in the house, and also upon officers of the house in reference to matters connected with any stage of the bill or other proceeding; except under special circumstances.

All other special attendances in reference to other proceedings in the house may be charged according to the circumstances of each case, in conformity with such parts of this list as may be applicable thereto.

Attendances before the *Examiners of Petitions* for Private Bills:

Unopposed cases :

| | £ | s. | d. |
|--|---|----|----|
| To prove compliance with the standing orders in the case of a petition for a bill, and obtaining indorsement by examiner | 2 | 2 | 0 |
| In second class bills, (according to circumstances)† from 2 <i>l.</i> 2 <i>s.</i> to | 3 | 3 | 0 |
| [Parliamentary Agents two guineas.] | | | |

* When the solicitor is also acting as parliamentary agent, he will be entitled to charge 2*l.* 2*s.* for his attendance at the house on the second reading, the consideration of the report, and the third reading; but on other stages or proceedings, 1*l.* 1*s.* only, except under special circumstances.

† The charges of the parliamentary agent are the same as the solicitor, except in the instance specified.

If adjourned for further proofs, each £ s. d.
 subsequent attendance when the examiner shall inquire into the same, or attending to apply for postponement or adjournment (when such attendance is necessary) 1 1 0

To prove compliance with the standing orders in the case of petitions for additional provision (when such attendance is necessary) 1 1 0

Opposed cases :

For every day on which memorials complaining of non-compliance with the standing orders are inquired into by the examiner (according to circumstances) . . . from 3*l.* 3*s.* to 5 5 0

For entering appearances upon memorials before the examiner, and watching proceedings in case such memorials are not called on, each day (according to circumstances) from 2*l.* 2*s.* to 3 3 0

When an agent or solicitor appears and attends for two or more memorials, complaining of non-compliance with the standing orders, on behalf of the same clients, he will be entitled to charge one day's attendance only in respect of the same, except under special circumstances.

For every day on which a petition for £ s. d.
 a bill is on the examiner's daily list, but is not called on 2 2 0

When two or more petitions for bills, being promoted or opposed by or on behalf of the same clients, are appointed for consideration by the examiner on the same day, but are not called on, the agents and solicitors of such clients respectively will not be entitled to such charge in respect of each petition for a bill so promoted or opposed, but may charge any sum not exceeding 1*l.* 1*s.* for additional trouble (if any) in respect of each other petition for a bill on the same list; provided that in no case (except under special circumstances) shall a charge exceeding 5*l.* 5*s.* be made in respect of one such day's attendance on behalf of the same clients.

For every day on which memorials £ s. d.
 complaining of non-compliance with the standing orders in the case of petitions for additional provision are inquired into by the examiner (according to circumstances) from 1*l.* 1*s.* to 2 2 0

Other special attendance before the examiner in opposed cases (according to circumstances), from 1*l.* 1*s.* to 2 2 0

Attendances before Committees :

Attending the standing orders committee each day in which the case is on the list, and is heard, postponed, or adjourned, (when such attendance is necessary) 2 2 0

Attending the committee of selection when committee appointed to meet on a certain day, or on other special and necessary occasions, (when such attendance is necessary) from 1*l.* 1*s.* to 2 2 0
 [Parliamentary Agent 1 guinea.]

Committee on the Bill :

Unopposed Bills :

Attending when the bill is considered £ s. d.
 by the committee (according to the class of bill, and other circumstances) 3 3 0

[Parliamentary Agent from 2 to 3 guineas]

Under special circumstances in railway and other bills, from 3*l.* 3*s.* to 5 5 0

Attending the committee to apply for a postponement or adjournment, (when such attendance is necessary) 1 1 0

Opposed Bills :

Attending the committee every day on which the bill is considered by the committee !—

When the parties appear without counsel (according to circumstances) . . . from 3*l.* 3*s.* to 5 5 0

When the parties appear by counsel and the preamble is considered by the committee . . . from 3*l.* 3*s.* to 5 5 0

[Parliamentary Agent 2 guineas.]

When the clauses of the bill are considered by the committee from 3*l.* 3*s.* to 5 5 0

[Parliamentary Agent 3 guineas.]

When an agent or solicitor appears and attends for two or more petitions against a bill, on behalf of the same clients, he will be entitled to charge one day's attendance only in respect of the same, except under special circumstances.

Attending to watch proceedings of a £ s. d.
 committee on a group of bills, when the bill in respect of which the agent or solicitor is concerned has not been postponed until a future day, but is not considered by the committee, per day 1 1 0

When two or more bills, being promoted or opposed by or on behalf of the same clients, are appointed for consideration by the committee on the same day, but are postponed or adjourned without being considered, or are not separately considered by the committee, the agents or solicitors of such client respectively will not be entitled to such charge in respect of each bill, so promoted or opposed; but may charge any sum not exceeding 1*l.* 1*s.* for additional trouble (if any) in respect of each other bill so postponed or adjourned, or not separately considered; provided that in no case (except under special circumstances) shall a charge exceeding 5*l.* 5*s.* be made in respect of one such day's attendance upon the committee on behalf of the same clients.

Other attendances, at the House, or otherwise :

Special attendances upon Mr. Speaker £ s. d.
 or the chairman of the committee of ways and means, in reference to any bill 1 1 0

Special attendances (not included in the sessional fee) upon Mr. Speaker's secretary or counsel, or other officer of the house 0 13 4

[Parliamentary Agent 10*s.* 6*d.*]

| | |
|---|--|
| At consultation with counsel . . . £2 2 0 | (The like to Parliamentary Agent when required to attend.) |
| On counsel, at chambers, with retainer; brief; to fix consultation and pay fee; with and for draft bill; and other attendances when fees are paid to counsel 0 10 0 | |
| Attending at the private bill office to deposit the petition for the bill, together with other documents required to be deposited therewith, and registering the same in the general lists of petitions, when acting as Parliamentary Agent 1 1 0 | |
| Attending to deposit other documents required by the standing orders to be deposited (except bills, amendments, breviate, &c., the deposit of which in certain cases, is included in the sessional fee). See II. 0 13 4 | [Parliamentary Agent 10s. 6d.] |
| If at distance, clerk's time and expenses are to be charged instead of the preceding. | |
| Attending at the Private Bill Office to deposit petitions in favour of or against any private bill, and registering the same; viz. : | |
| If one petition, or less than three 0 13 4 | [Parliamentary Agent 10s. 6d.] |
| If three petitions, and less than seven 1 1 0 | |
| If seven petitions, and less than 12 1 11 6 | |
| For any number exceeding 12 2 2 0 | |

II.—SESSIONAL OR SOLICITATION FEE FOR Soliciting the Bill for the Promoters by the Parliamentary Agent.

| | |
|---|--------|
| When the bill has received the Royal Assent £ s. d. | 26 5 0 |
| [In case the bill should not receive the Royal Assent, a sessional fee of two guineas and upwards may be charged according to the class of bill, and the progress made through its several stages.] | |

The sessional fee will include all attendances not otherwise specially mentioned in this list, at the following offices of the House of Commons; viz.—

- Chairman of the Committee of Ways and Means:
 - To deposit bills, clauses and amendments, and afterwards to obtain the same; and all other formal attendances.
- Mr. Speaker's Counsel:
 - To deposit prints of bills, and to obtain breviate and return the same.
- Mr. Speaker's Secretary:
 - All formal attendances to leave amended bills and clauses, and to obtain the same agreed to.
- Private Bill Office:
 - To give notices.
 - To examine register and other books.
 - To deposit prints of bills, amended bills, and copies of proposed amendments.
- Fee Office:
 - To pay fees, and all other attendances in re-

ference thereto, and with copies of bills when required.

Journal Office :
To order and obtain copies of reports, petitions and other papers; except in the case of opposed bills, when 7s. 6d. may be charged for attending to bespeak and afterwards to obtain the same.

Committee Clerks' Office :
All ordinary attendances with reference to the progress of the bill.

Ingrossing Office :
To deposit copies of bills for ingrossment, and to receive the same when ingrossed.

Vote Office :
To deliver printed breviate.

Doorkeepers :
To deliver prints of bills, &c.

Offices for the Sale of Parliamentary Papers :
To obtain printed reports and other papers required for use in the progress of the bill.
The sessional fee will also cover all ordinary communications of the agent with the solicitor, with reference to the progress of the bill through its various stages, when no professional advice or instruction is given.

When a parliamentary agent is employed, the solicitor will not be entitled to the sessional fee, but may charge from two guineas to ten guineas, according to circumstances, in respect of his ordinary communications with such agent, with reference to the progress of the bill through its various stages, and other matters not otherwise charged.

When no other parliamentary agent is employed, the solicitor acting in that capacity will be entitled to the sessional fee.

In cases of opposition to bills, no sessional fee is allowed.

III.—DRAWING DOCUMENTS.

Instructions :

| | |
|---|---------|
| Drawing any special instructions as to the publication of the notice, contents of plans and books of reference, and other requirements of the standing orders (if required) : | £ s. d. |
| If less than 5 folios | 0 6 8 |
| If less than 11 folios | 0 13 4 |
| If of greater length, per brief sheet (of 10 folios) | 0 13 4 |
| Notice in Gazette or newspaper : | |
| If less than 11 folios | 1 1 0 |
| If more than 11 folios, per folio | 0 2 0 |
| Subscription contract : | |
| Instructions | 0 13 4 |
| Per folio | 0 2 0 |
| Alphabetical list of subscribers, per folio | 0 1 4 |
| Book of reference : | |
| Per folio | 0 2 0 |
| Index to book of reference, for preparing notices, per folio (including such copies as may be necessary for preparing the notices) | 0 2 0 |

| | | | |
|--|--------------------|----|----------|
| List of owners, lessees and occupiers : | | | |
| Per folio | 0 | 2 | 0 |
| Estimates of expenses, or of rates and tolls : | <i>s. d.</i> | | |
| Drawing | 6 | 8 | } 0 10 0 |
| Fair copy for signature | 3 | 4 | |
| Declaration in lieu or in aid of subscription contract (according to circumstances) | from 13s. 4d. to 1 | 1 | 0 |
| Applications to owners, lessees, and occupiers of lands and houses : | | | |
| Drawing, and fair copy for service, each application (including the letter of assent, dissent, or neutrality, left or forwarded therewith) | 0 | 10 | 0 |
| Each notice of abandonment and other notice not being in the form set forth in Appendix (A.) to the standing orders | 0 | 5 | 0 |
| Petition for bill : | | | |
| If less than 11 folios | 1 | 1 | 0 |
| If more than 11 folios, per folio | 0 | 2 | 0 |
| Petition against bill, and praying to be heard by counsel : | | | |
| Instructions | 0 | 13 | 4 |
| If less than 11 folios | 1 | 1 | 0 |
| If more than 11 folios, per folio | 0 | 2 | 0 |
| Other petitions for or against bill : | | | |
| If less than 11 folios | 0 | 13 | 4 |
| If less than 15 folios | 1 | 0 | 0 |
| If more than 15 folios, per sheet or, per folio | 0 | 13 | 4 |
| Bill : | | | |
| Instructions | 2 | 2 | 0 |
| Drawing bill, per folio | 0 | 2 | 0 |
| Additional clauses, per folio | 0 | 2 | 0 |
| Agent's declaration, and copies (according to circumstances) | from 10s. to 2 | 2 | 0 |
| Breviate of Bill for Mr. Speaker : | | | |
| [To be included in the charge for making up bill for House]. See <i>infra</i> . | | | |
| Motions, special, for members : | <i>s. d.</i> | | |
| Drawing | 6 | 8 | } 0 10 0 |
| Fair copy for member | 3 | 4 | |
| Charges for drawing, and copies of all ordinary motions on the several stages of the bills, and other proceedings in the House, to be included in the fees for attendance. | | | |
| Statements of Proofs on standing orders : | <i>£. s. d.</i> | | |
| Per brief sheet of 10 folios | 0 | 13 | 4 |
| Statements for standing orders committee (according to length and other circumstances) | from 13s. 4d. to 2 | 2 | 0 |
| Or, per brief sheet of 10 folios | 0 | 13 | 4 |
| Memorials complaining of non-compliance with standing orders : | | | |
| If less than 11 folios | 1 | 1 | 0 |
| If more than 11 folios, per folio | 0 | 2 | 0 |
| Briefs : | | | |
| Instructions for brief (according to circumstances). | | | |

| | | | |
|---|---|----|----|
| Drawing same, per brief sheet of 10 folios | £ | s. | d. |
| | 0 | 13 | 4 |
| Statements, reports, or other documents prepared for use in proceedings of the House, or in preparing to comply with the standing orders, per folio | 0 | 1 | 4 |
| Or, per brief sheet of 10 folios | 0 | 13 | 4 |
| Affidavits of service of notice, and other matters which may be proved by affidavit, unless very long and special : | | | |
| Each affidavit, and copy | 0 | 10 | 0 |
| In all cases the charge for drawing will include one fair copy to keep for the solicitor's or agent's own use, or for counsel, or an agent to settle. | | | |

IV.—PARLIAMENTARY AGENTS' CHARGES.

| | | | |
|---|----------------------------|----|---|
| For Perusing and Settling Documents Drawn by a Solicitor (when required.) | | | |
| Notices for Gazette and newspapers : | | | |
| If less than 11 folios (according to length and other circumstances) | from 10s. 6d. to 1 | 1 | 0 |
| If more than 11 folios (according to length and other circumstances) | from 1 <i>l.</i> 1s. to 2 | 2 | 0 |
| Petition for bill : | | | |
| If less than 11 folios | from 10s. 6d. to 1 | 1 | 0 |
| If more than 11 folios | from 1 <i>l.</i> 1s. to 2 | 2 | 0 |
| (Or if the same shall exceed 50 folios, 1s. per folio upon the whole petition). | | | |
| Petition against bill, and praying to be heard by counsel or Memorial complaining of non-compliance with the standing orders : | | | |
| The same charges as for a petition for a bill. | | | |
| Other petitions, against or in favour of bills, each petition | 0 | 6 | 8 |
| Statements of proofs on standing orders, or statements for standing orders committee, reports, and other documents (if required,) when the same have been drawn by the solicitor (according to circumstances) | from 6s. 8d. to 1 | 1 | 0 |
| Or per brief sheet of 10 folios | 0 | 6 | 8 |
| Perusing and settling bills and preparing the same in parliamentary form and for press : | | | |
| For any bill not exceeding 60 folios, according to the length of the bill, and the nature and extent of revision | from 2 <i>l.</i> 2s. to 5 | 5 | 0 |
| For any bill exceeding 60 folios and less than 150, according to the length of the bill, and the nature and extent of revision | from 5 <i>l.</i> 5s. to 10 | 10 | 0 |
| For any bill exceeding 150 folios, according to the length of the bill and the nature and extent of revision ; but not exceeding (except under special circumstances) one- | | | |

half the charge for drawing any £ s. d.
such bill 5 5 0
and upwards.

If new clauses or amendments be added, exceeding five folios, copies of the same may be charged at 8d. per folio.

Perusing and settling clauses and amendments (according to length and other circumstances).

If a parliamentary agent shall have drawn any of the above documents himself, or if the solicitor shall be acting as parliamentary agent, no charge shall, on any account, be made for perusing and settling such documents in addition to the charge for drawing.

VIII.—CORRESPONDENCE.

Between Solicitor and Parliamentary Agent :
The ordinary correspondence between parliamentary agents and solicitors is not to be charged to their clients, but such letters only as contain professional advice and instructions.

V.—COPIES OF DOCUMENTS.

Documents for Deposit :
Books of reference, lists of owners, lessees and occupiers, and other similar documents required by the standing orders to be deposited, where the same are deposited in manuscript :

For the copies so deposited, per folio (of 72 words or figures) 0 1 0

For all copies of notices, petitions, bills, clauses, statements, memorials, drafts, briefs, abstracts and other documents required for proceedings of the house, or in preparing to comply with the standing orders :

Per folio 0 0 8
Or, per brief sheet of 10 folios 0 6 8

For ingrossing petitions, memorials, subscription contracts, and other parliamentary documents :

Per folio 0 1 0

Copies of minutes of evidence (if required for use in the proceedings of the house) :

Per folio 0 0 8

VI.—EXAMINING DOCUMENTS.

Prints of Bills :

Proofs 0 13 4
Or, per page of print 0 1 0
Revises 0 6 8
Or, per page of print 0 0 6

Ingrossment of Bills :

Per page of print 0 2 0

Clerk attending Private Bill Office to examine Ingrossment :

Per page of print 0 0 6

Notice in Gazette or Newspaper :

Proof from the printer, from 3s. 4d. to 0 13 4

Revises (according to circumstances)
from 3s. 4d. to 0 6 8

LAW APPOINTMENTS.

THE Lord Chancellor has appointed Robert Crosby to be second Assistant Clerk of Affidavits in the Chancery Affidavit Office, vacant by the death of William Thodey Smith.

MASTERS EXTRAORDINARY IN CHANCERY.

From Aug. 22nd, to Sept. 22nd, 1848, both inclusive, with dates when gazetted.

Calvert, Francis William, York. Aug. 29.

Harward, Arthur, Wirksworth. Sept. 8.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Aug. 22nd, to Sept. 22nd, 1848, both inclusive, with dates when gazetted.

Cook, Robert, and Thomas Anstey Mansford, Bath, Attorneys and Solicitors. Sept. 5.

Maples, Thomas Frederick, Peter John Thomas Pearse, Charles Stevens, and Frederick Maples, Frederick's Place, Old Jewry, Attorneys and Solicitors. Sept. 9.

Newstead, Christopher John, and Henry Charles Wilkinson, York, Attorneys and Solicitors. Aug. 25.

Rawsthorne, Thomas, and Thomas Swainson, Lancaster, Attorneys, Solicitors, Conveyancers, Stewards, and Agents. Sept. 22.

Vallance, Henry Wellington, and Richard William Fletcher Beioley, 9, Old Jewry Chambers, Attorneys and Solicitors. Sept. 12.

PERPETUAL COMMISSIONERS.

Appointed under the *Fines and Recoveries Act.*

Legge, John Robinson, Houghton-le Spring, in and for the county of Durham.

Pearse, John, Hatherleigh, in and for the county of Devon.

Radcliffe, Henry, Oldham, in and for the county of Lancaster and West Riding of the county of York.

VII.—MAKING UP COPIES OF BILLS AND FILLING UP AMENDMENTS.

Making up bill for house, and drawing brieve for Mr. Speaker, and fair copy 1 1 0

Filling up Bills with Amendments :

For the first copy, unless the amendments be very numerous and special 0 6 8

For each other copy, unless the amendments be very numerous and special 0 3 4

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor of England.

Pocock v. Johnson. July 26, 1848.

PAYMENT OF LEGACY.—ASSIGNEE.—COSTS.

In a suit by legatees against the executors of a will for payment of their legacies, an assignee of one of the legatees was made a party: Held, that the executors having had in their hands sufficient assets to discharge the legacies when they became payable, the costs of the assignee should be paid by the executors.

A TESTATOR, J. Pocock, by his will gave all his personal property to his trustees, of the name of Johnson, on trust to pay certain legacies at the expiration of five years from his decease. He died in 1837, and in 1840 one of the legatees assigned his legacy to one Slatter; at the expiration of the five years, applications were made unsuccessfully to the trustees, who had proved the will for payment of the legacies: these applications were continued until 1844, when a bill was filed by one of the legatees, on behalf of himself and the others, for the payment of the legacies. Slatter, the assignee, being made a party, the suit went on, and a reference was taken for the Master to inquire whether the executors (trustees of the will) had assets, and he found that in 1842, when the legacies were payable, the executors had assets in their hands sufficient to discharge the legacies; the common decree was then taken against the defendants, (the executors,) and a question was raised, whether the defendants should pay Slatter's costs, he being an assignee of one of the plaintiffs.

Mr. Stuart for the plaintiffs.

Mr. Bethell and Mr. Lewis for the defendants.

The Vice-Chancellor said, he thought it very reasonable to suppose, that if the legatees had, in 1842, been paid their legacies as they ought, pursuant to the terms of the will, the assignee would also have been paid, therefore, he thought that the defendants having brought these proceedings on themselves, they ought to pay the costs of the assignee.

Court of Queen's Bench.

(Before the Four Judges.)

The Queen v. The Proprietors of the London and South-western Railway Company. Trinity Term, 1848.

MANDAMUS.—RAILWAY.

The proprietors of a railway who have given notice of a demand to take part of any premises for the purposes of their railway, are not compellable under the 18th and 92nd sections of the 8 Vict. c. 18, to take the whole of such premises, though the owner of such premises has given them

notice that he is "willing and able to sell and convey the whole thereof."

A mandamus issued upon such a notice cannot be sustained for the purpose of enforcing an assessment of damages as to part of the premises, but there must be a formal requirement of compensation as to part.

IN this case a mandamus had been obtained to command the defendants to summon a jury, to assess damages for a manufactory, part of which the defendants had, under their own act and the Lands Clauses Consolidation Act, given notice of their intention to take for the purposes of the railway. There had been a return to this mandamus, and several questions were raised as to the sufficiency of the writ and the pleadings respectively, but though the case was argued on a great many points, the Court ultimately gave judgment on one alone, namely, whether, taking the 18th and 92nd sections of the 8 Vict. c. 18, (The Lands Clauses Consolidation Act) together, the defendants were bound to purchase the whole of the prosecutor's premises, the prosecutors having, after a demand by the defendants of part of these premises, given formal notice that they were ready to sell the whole of them.

Mr. Martin argued the case for the prosecutors, and Mr. M. D. Hill for the defendants.

The Court had taken time to consider the judgment.

Lord Denman, C. J., (July 12,) delivered judgment. The writ in this case had been objected to as bad, because by it the prosecutors claimed an assessment for the value of all the prosecutor's premises, though the defendants had only given notice of an intention to take part of them. This objection raised the question, whether under the provisions of the Lands Consolidation Act the defendants were compellable to take all the premises of a party when they only required part of those premises for the purposes of their railway. The Court did not think that the sections referred to warranted the claim now brought forward. The 18th section merely gave directions as to the notices to be given by companies to proprietors of lands, and the 92nd section enacted, "that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or building or manufactory, if such party be willing and able to sell and convey the whole thereof." The writ stated, that on the 14th of May, 1846, the defendants gave notice of a demand of a part of the prosecutor's premises, and that the prosecutors then gave notice to take the whole, and it alleged, according to the words of the act, that the prosecutors were willing and able to sell and convey the whole thereof. The question was, whether the provisions of the statute were, under such circumstances, compulsory on the defendants to take the whole. The Court must decide that

question in the negative, for the 92nd section merely protected owners who were willing to sell the whole from being obliged to sell a part of their premises, but it did not compel a company which only wanted part, to take the whole. The writ therefore, which proceeded entirely on the foundation of an assumed compulsion of that kind, could not be sustained. The writ must consequently be quashed; and this must be the result, notwithstanding the argument of the prosecutor's counsel, that it could issue for the assessment of compensation as to part of the premises, for it did not appear that any claim for compensation for part had been made according to the provisions of the statute.

Judgment for the defendants.

Court of Common Pleas.

Tibaldi v. Ellerman. Trinity Term, 1848.

ACTION ON A BILL OF EXCHANGE.—PLEA (IN EFFECT) OF NO CONSIDERATION.—REPLICATION DE INJURIA.

Where, to an action on a bill of exchange the defendant (the acceptor) pleaded that the bill had been drawn by the plaintiff and accepted by the defendant in discharge and satisfaction of a previous bill, which had been drawn and accepted by the same parties, and the proceeds applied in the carrying out of a patent, in which the plaintiff and defendant are interested as partners, and further that the accounts of the said partnership were still open and unsettled, and that no other consideration was ever given for the defendant's acceptance. Semble, that such was a plea in excuse to which de injuria was properly replied.

THIS was an action upon a bill of exchange, against the acceptor. The defendant pleaded, that before the drawing and accepting of the bill of exchange, hereinafter next mentioned, to wit, on the 14th of December, 1847, plaintiff and defendant were in co-partnership in a certain patent, to wit, a patent for, &c., and were then jointly interested in the working and carrying out the same, and that it was then agreed that the plaintiff should draw and the defendant accept a certain other bill of exchange, dated the said 14th day of December, 1847, whereby the defendant promised to pay to the order of the said plaintiff 208*l.* 10*s.*, on, &c., to enable the plaintiff to raise money thereon, and that the proceeds should then be delivered to the defendant, and applied by the defendant to the purposes of working and carrying out the said patent; and the defendant further saith, that the proceeds of the said last-mentioned bill amounted to 200*l.*, and that the defendant did, in pursuance of the said agreement, then apply the same to the working and carrying out of the said patent, and to no other purpose. And the defendant further saith, that when the said last-mentioned bill became due and payable, to wit, on the 3rd day of February, 1848, it was further agreed between the plaintiff and the defendant that the plaintiff should draw and the defendant accept, and the plaintiff did then draw, &c., a certain other bill of exchange,

dated the said 3rd day of February, 1848, whereby the defendant promised to pay to the order of the plaintiff the sum of 24*l.* 10*s.* two months after the date thereof. And the defendant further saith, that it was then, to wit, on the said 3rd of February, 1848, further agreed between the plaintiff and defendant that the said last-mentioned bill of exchange should be taken and received, and the same was, &c., in full satisfaction and discharge, and in lieu of, the said bill of exchange, dated the 14th of December, 1847, as aforesaid; and that there was never any value or consideration for the defendant accepting the said bill of exchange, dated the 3rd of February, 1848, or for the payment of any part of the amount thereof by the defendant to the plaintiff, except as aforesaid. And the defendant further saith, that afterwards, and before the commencement of this suit, and when the said last-mentioned bill became due and payable, to wit, on the 6th day of March, 1848, it was further agreed by, &c., that the plaintiff should draw, &c., (as before,) the said bill of exchange in the said declaration mentioned; and that the same should be taken and received, &c., (as before,) dated the 3rd of February, 1848. And the defendant further saith, that there never was at any time any value or consideration for the said defendant's accepting the said bill of exchange in the said declaration mentioned, or for his paying any part of the amount thereof to the plaintiff, except as aforesaid. And the defendant further saith, that the accounts of the said co-partnership were, at the time of the accepting the said bill of exchange in the said declaration mentioned, and still are open, unsettled, and unbalanced. (Verification.)

Replication *de injuria*, and at the same time the addition by the plaintiff of the similitur, and delivery of the issue made up to the defendant with notice of trial. The defendant thereupon struck out the similitur and returned the issue, with a special demurrer to the replication, and a rule *nisi* to set aside the demurrer as frivolous, having been obtained by *Lush* on behalf of the plaintiff.

C. W. Wood now showed cause. The present is not such a plea by way of excuse as to make the replication *de injuria* good. It is not like a plea which said there was no consideration, but it shows facts before the acceptance from which the law cannot imply a promise. *Crogate's case*, 8 Rep. 67; *Solly v. Neish*, 2 Cr. M. & R. 359. Here too the defendant claims an interest in the money as a partner, and there is no case which establishes that a plea of partnership is one to which the replication *de injuria* is good. The case of *Whittaker v. Mason*, 2 Bing. N. C. 359, is an authority that *de injuria* cannot be replied to a plea which like this does not admit any promise, but does in fact amount to the general issue. [*Maule, J.* To a declaration on a bill of exchange *non assumpsit* cannot now be pleaded. Therefore, if you want to evade payment you must show either that the bill did not exist, or some excuse for not paying it.]

But the rule taking away the general issue did not in any way alter the effect and applicability of the replication *de injuriâ*. The present plea is as much a plea in discharge as that in the case of *Schild v. Kilpin*, 8 M. & W. 673. [Maule, J. There the plea denied the breach of the non-payment of the bill. In the present case the plea in effect says, not that the defendant never promised to pay, but by way of excuse for not paying, that he is not bound to pay.]

Wilde, C. J. The effect of the plea is, that there was no consideration for the bill. The partnership account being still open, does not affect the nature of the plea at all. The case is not within any of the exceptions in *Crogate's case*.

Rule absolute. The similiter and notice of trial to stand, the defendant to amend by withdrawing his demurrer and joining issue, and to pay the costs of such amendment and of the present application.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PLEADINGS.

[Concluded from p. 436, ante.]

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Law of Arbitration, p. 315.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, pp. 169, 190.

Bankruptcy, p. 213.

Lunacy, p. 216.

Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.

Construction of Statutes, pp. 332, 351.

Law of Property and Conveyancing, p. 370.

Principles of the Common Law and Grounds of Action, pp. 393, 411.

Pleadings, p. 430.]

LIBEL.

Inducement and innuendoes.—Setting out document "in substance."—In an action for libel or slander, when the words, written or spoken, are not in themselves applicable to the individual plaintiff, no introductory averment or innuendo can give such an application.

Therefore, where the declaration in the first count, after reciting that plaintiff was employed in supplying fresh water to ships at *H.*, and had, for that purpose, fitted up a schooner with wooden tanks, and that the ship *M.* being at *H.*, plaintiff conveyed fresh water to the *M.* in the wooden tanks of his schooner, complained that defendant published, of and concerning

plaintiff in his said employment, and concerning the water so supplied to the *M.*, a statement (set forth in the count) that persons on board the *M.* had become ill soon after leaving *H.*, where they had taken in fresh water, which illness was occasioned by the water; that the water was run into a copper tank, whence the casks were filled alongside; that the poison was imbibed from the tank; and that it behoved the authorities to order its removal, and replace it with an iron one; thereby meaning that plaintiff had been guilty of supplying bad and unwholesome water to the *M.*: judgment on that count arrested.

Where a declaration for libel sets out a publication which refers to a previous publication, but, unless by reference to the language of the previous publication, contains no libel, such previous publication must be considered as incorporated in the publication complained of, and must appear in the declaration to be set out verbatim, and not merely in substance. Therefore judgment was arrested as to the 2nd count of the above declaration, which, after reciting that defendant published a statement, "in substance as follows," setting out the publication charged in the first count, charged that defendant afterwards published, of and concerning plaintiff, &c., and of and concerning the first publishing, a statement that the copper tank was fitted up in a schooner belonging to plaintiff. *Solomon v. Luwson*, 8 Q. B. 823.

Cases cited in the judgment: *Gutsolo v. Mathers*, 1 M. & W. 495; *Tyrwh. & Gr.* 694; *Cook v. Cox*, 3 M. & S. 110; *Wood v. Brown*, 6 Taunt. 169; *Wright v. Clements*, 3 B. & Ald. 503.

2. In a replication to a plea in an action of libel, where the defendant pleads the defence given by the 6 & 7 Vict. c. 96, s. 2, the plaintiff may traverse such allegations in the plea as he thinks proper, although by that section it is enacted, "that to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea." *Chadwick v. Herapath*, 4 D. & L. 653.

LIBERUM TENEMENTUM.

Held, on error in the Exchequer Chamber,

Affirming the judgment of the Court of Exchequer, that *liberum tenementum* is a good plea to a declaration in trespass for breaking and entering a dwelling-house in the occupation of the plaintiff, and expelling him and his family therefrom, although the premises are not particularly described in the declaration. *Harvey v. Bridges*, 1 Exch. R. 261.

LIMITATION ACT.

In trespass *qu. cl. freg.*, the defendant pleaded specially, deducing title to the *locus in quo*, under an inclosure act, in *J. S.*, and alleging that *J. S.* thereupon became and continued possessed thereof until just before the time when, &c., and the defendant then justified the trespasses as the servant of *J. S.*, and by his command. The plaintiff replied, that the defendant entered and committed the trespasses after the passing of the Limitation Act, 3 & 4 W. 4, c. 27; that the entry was made to recover the close in which, &c.; and that the right to make such entry did not first accrue to *J. S.*, or to the defendant, or any person through whom *J. S.* or the defendant claimed, within 20 years next before such entry: *Held*, good, on special demurrer, and that it was not necessary to set forth the particular mode in which the estate of *J. S.*, or the party through whom he claimed, had determined. *Jones v. Jones*, 16 M. & W. 699.

MARRIAGE, BREACH OF PROMISE OF.

In a declaration for breach of promise to marry plaintiff within a reasonable time after request by her, if the count shows that the defendant, after promise and before action brought, married a person other than the plaintiff, request is not a necessary averment; and a plea to such count, alleging as new matter, that request was not made, is no defence.

The declaration, averring defendant's marriage to such other person, need not show that the person is still living.

So *held*, on demurrer to a plea which stated, by way of confession and avoidance, that plaintiff did not, at any time before action brought, request defendant to marry. *Short v. Stone*, 8 Q. B. 358.

See *Severely Matters*.

NEGATIVE PREGNANT.

If trespass, where the defendant pleads *lib. ten.* in *J. S.*, and justifies the trespasses as the servant of *J. S.*, and by his command, a replication that the defendant did not, as the servant of *J. S.*, and by his command, commit the trespasses, is bad on special demurrer, as involving a negative pregnant. *Jones v. Jones*, 16 M. & W. 699.

Cases cited in the judgment: *Bell v. Tuckett*, 3 M. & G. 806; *Michael v. Myers*, 6 M. & G. 709; *Myn v. Cois*, Cro. Jac. 87; *Auberie v. James*, Ventr. 70.

NUISANCE.

See *Abating Nuisance*.

PARTIES.

See *Railway*.

PAYMENT INTO COURT.

1. *Bill of Exchange*.—Assumpsit. First count on a bill of exchange for 26*l.* 13*s.* 2*d.* Second count for 30*l.*, for money lent, and on account stated. Pleas: 1st. Non assumpsit to the last count, except 10*l.* 9*s.* 1*d.*; 2nd. Plea to the whole declaration, except 10*l.* 9*s.* 1*d.*, parcel of the 1st count, and 10*l.* 9*s.* 1*d.*, parcel of the last count, payable before action brought, and a set-off. Last plea as to 10*l.* 9*s.* 1*d.*, parcel of last count, payable into Court of 11*l.* (See Reg. Gen. Trin. 1 Vict.) On special demurrer to the last plea, it was *held* bad, for setting up as a defence payment of a less sum than the whole admitted to be due and pleaded to, without other answer as to the difference than damages, ultra the sum paid in. *Tattersall v. Parkinson*, 16 M. & W. 752.

Case cited in the judgment: *Jourdain v. Johnson*, 2 C. M. & R. 561; 6 Tyrw. 524.

2. *Satisfaction*.—*Damages ultra*.—To a declaration containing a count on a bill of exchange for 26*l.* 13*s.*, and also a count for 30*l.* for money lent; the defendant pleaded as to 10*l.* 9*s.* 1*d.*, parcel of the first count, and 10*l.* 9*s.* 1*d.*, parcel of the second count, payment into Court of 11*l.*, (according to the form given by the rule of Court): *Held*, on special demurrer, that the plea was bad, as it admitted two sums of 10*l.* 9*s.* 1*d.* to be due, and a payment of a less amount into Court was no satisfaction.

Where a declaration contains a count on a bill of exchange, and also a count on the consideration for the bill: *Seemle*, the plea ought to allege that the bill was given for the debt in the second count, and then plead payment into Court of the amount of the bill and interest. *Tattersall v. Parkinson*, 34 L. O. 331.

See *Accord and Satisfaction*.

PLEA TO THE JURISDICTION.

In the title of a plea to the jurisdiction, the defendant described himself as "Charles Frederick Augustus William, Sovereign Duke of Brunswick and Luneburg, sued as," &c., "at the suit of Charlotte Munden." In the affidavit supporting the plea, he was similarly described; but the appearance which he had entered was "Charles Frederick Augustus William, Duke of Brunswick and Luneburg, sued as," &c., omitting the word "*Sovereign*." The plaintiff treated the plea as a nullity, and signed judgment. The Court refused to set aside the judgment without an affidavit of merits. *Munden v. Duke of Brunswick*, 4 D. & L. 807.

PLEA AMOUNTING TO GENERAL ISSUE.

To an action of assumpsit for the use and occupation of furnished apartments, the defendant pleaded, that before he occupied the apartments by the permission of the plaintiff, he held them as tenant under a demise from one *A. B.*, whose property they were; that while he so held them, *A. B.* assigned them to the plaintiff, that the defendant became indebted in respect of the apartments, and that he paid *A. B.* a certain sum of money for them, by whom it was

accepted in satisfaction of the debt. Averment, that the defendant never had notice of the assignment to the plaintiff, that he never agreed to become the plaintiff's tenant, that he never expressly requested the plaintiff to permit him to occupy the apartments, and that he never expressly promised the plaintiff to pay him for them: *Held*, that the plea amounted to the general issue. *Cook v. Moylan*, 1 Exch. R. 67.

PROMISSORY NOTE.

1. *Consideration.—Variance.*—To an action on a promissory note for 150*l.*, by payee against maker, defendant pleaded that *W.* was indebted to plaintiff in 3,612*l.* 10*s.*, and was unable to pay in full; whereupon it was agreed between plaintiff, defendant, and *W.*, that plaintiff should accept a composition, to wit, 1,500*l.*, in satisfaction and discharge of the 3,612*l.* 10*s.*, and, in consideration of the premises, and the plaintiff would accept the 1,500*l.* in satisfaction and discharge, defendant should make the note in part payment, and on account, of the 1,500*l.*, and the plaintiff should not enforce, or in any way claim or demand payment of any further sum than the 1,500*l.*: that the defendant made the note upon the terms of the agreement, and that there never was any other agreement; that *W.* afterwards, and before the note was due, became bankrupt; yet plaintiff, with defendant's consent, proved in the bankruptcy for the full amount of the 3,612*l.* 10*s.*: *Held*, a good plea, on motion for judgment *non obstante veredicto*: but *Held*, on motion for a new trial, that the plea was not proved by evidence of an agreement, that on giving 350*l.* down, 150*l.*, by note, and a bond of other parties for 1,000*l.*, *W.* should be relieved from the original debt. *Gillett v. Whitmarsh*, 8 Q. B. 966.

2. *Suspension of remedy.*—To an action by indorsee against maker of a promissory note, the defendant pleaded that the note was made by himself and *E.*, his partner; and that whilst the plaintiff was the holder of the note, the defendant and *E.* delivered to him 19 signed bills of costs, which were referred to taxation; that it was agreed that the balance found due from the plaintiff to the defendant and *E.*, on such taxation, should be applied in part payment of the note, and that the balance of the note, with interest, should be secured by a judgment, payable at certain periods, which had elapsed before the commencement of the suit; that the taxation was still pending, and the balance not ascertained; and that the defendant and *E.* had always been ready and willing to apply the balance due to the defendant towards the payment of the note, and on completion of the taxation, to secure the balance due on the note by a judgment in accordance with the agreement: *Held*, bad, on demurrer, as, even supposing it to be a good agreement to suspend the remedy, the lapse of time showed the performance of it to be impossible. *Carter v. Wernald*, 5 D. & L. 131.

See *Accord and Satisfaction*, 2.

PRAYING JUDGMENT.

To a declaration against one, the defendant

pleaded in abatement the non-joinder of a co-contractor, and concluded his plea by praying judgment of the declaration only. Two defendants, however, were named in the writ: *Held*, that the plea should have prayed judgment of the writ as well as of the declaration. *Whitling v. Desange*, 4 D. & L. 678.

Case cited in the judgment: *Davies v. Thompson*, 3 D. & L. 49; 14 M. & W. 161.

RAILWAY.

Parties to action.—Consideration.—A declaration stated, that before the making of the promise of the defendant, to wit, on the 20th of August, 1845, the plaintiffs had agreed together with divers, to wit, 200 other persons, to endeavour to form and establish a joint-stock company for making a railway, and to obtain an act of parliament for that purpose; the capital to be divided into shares of 20*l.* each, and a deposit of 2*l.* 2*s.* per share to be paid by such persons as should apply for and to whom the shares should be allotted by a committee of management; that the defendant applied to the plaintiffs, then being the committee of management, and requested them to allot him 50 shares, and then undertook to accept the same or a less number; and thereupon, to wit, on the 25th of November, 1845, the plaintiffs, at the request of the defendant, allotted him 35 shares in the said company, upon certain terms then agreed upon between them, that is to say, that a deposit of 2*l.* 2*s.* on each share so allotted should be paid on or before the 9th of December, 1845, to the account of the company, to certain bankers then agreed upon; and thereupon, in consideration of the premises, and that the plaintiffs, at the request of the defendant, had promised the defendant to perform the said terms on their part, the defendant promised the plaintiffs to perform the said terms on his part. Averment of plaintiff's readiness and willingness to perform the terms; and breach, the non-payment by the defendant of the deposit.

Held, that the declaration was good on general demurrer, although it did not allege that the company was provisionally registered under the 7 & 8 Vict. c. 110, or that it was formed before that act came into operation; for illegality will not be presumed; if it in fact exists, it should be made the subject of a plea. Also, that the declaration disclosed a contract upon which the plaintiffs alone might sue, without joining the other members of the company.

Held, also, on special demurrer, that the declaration was not bad for not alleging that the company was continuing when the shares were allotted to the defendant; nor for not showing with sufficient certainty that the defendant accepted the shares allotted; nor for not stating what the terms were which the plaintiffs undertook to fulfil. *Duke v. Forbes*, 1 Exch. R. 356.

Case cited in the judgment: *King v. Roxburgh*, 2 C. & Y. 418.

REPLICATION DE INJURIA.

1. *Replevin for taking cattle.* Plea, th. *W.*

was seised in fee of a forest, within which there were wastes; and that certain tenants of lands near the forest had a right of common on such wastes for their cattle levant and couchant; that there was a custom within the forest for the master forester to make drifts annually of the cattle depasturing the wastes, which were to be driven to a place named to ascertain whether any of them were unlicensed cattle, and whether any commoner had surcharged; and, if any had surcharged, the cattle were to be impounded as *damage feasant*. That plaintiff was a commoner; and defendant, making the drift as servant of the master forester, found plaintiff's cattle depasturing and doing damage in the place in which, &c.; and that plaintiff had surcharged by depasturing with the cattle seized: wherefore defendant detained the cattle to impound them.

Replication, admitting *W.*'s seisin, and the existence of the wastes, *de injuriâ absque residuo*, &c.: *Held*, good on special demurrer. *Mortimer v. Moore*, 8 Q. B. 294.

Cases cited in the judgment: *Crogate's case*, 8 Rep. 66 b.; *Wells v. Cotterell*, 3 Lev. 48; *Jones v. Kitchin*, 1 Bos. & Pull. 76, 80; *Selby v. Bardons*, 3 B. & Ad. 2; 1 C. & M. 500; 3 Tyrwh. 430; 9 Bing. 756.

2. *Tippling act*.—The replication *de injuriâ* is good to a plea which sets up a defence under the Tippling Act, 24 G. 2, c. 40, s. 12. *Lansdale v. Clarke*, 1 Exch. R. 78.

SCI. FA.

Banking co-partnership.—*Declaration*.—*Duplicity*.—*Semble*, that a declaration in *sci. fa.* on a judgment recovered against the public officer of a banking co-partnership, alleging that the defendant, at the time of judgment recovered, was, and from thence hitherto had been, and still is a member of the co-partnership, is bad on special demurrer. *Esdaile v. Trustwell*, 1 Exch. R. 371.

SET-OFF.

See *Accord and Satisfaction*.

SEVERAL COUNTS.

A charter-party was made between the plaintiff and defendant, but before the voyage was completed a subsequent agreement was made between the parties varying the terms of the original contract. The plaintiff obtained leave to have two counts in the declaration, but the defendant afterwards applied to a judge at chambers to strike out one of the counts as being in apparent violation of the new rules of pleading. The judge refused to make any order, but indorsed on the summons, "No order, I being satisfied that there is a distinct cause of complaint."

On motion to rescind the indorsement, the Court declined interfering with the discretion exercised by the judge, but expressed an opinion that if the facts stated were established at the trial, the plaintiff would not incur any risk of losing his costs under the new rules of pleading. *Hemod v. Wilkin*, 35 L. O. 119.

SEVERAL MATTERS.

Coverture.—*Attorney*.—*Judgment*.—*Irregularity*.—To a declaration which contained three counts, the defendant, who appeared by attorney, upon a rule in general terms to plead *coverture* and the Statute of Limitations, pleaded these defences to the whole declaration. The pleas were set aside by a judge at chambers, on the ground that the defendant, who appeared by attorney, had pleaded *coverture*. The defendant, without a fresh rule to plead, and without entering a fresh appearance, pleaded *coverture* to the two first counts, and the Statute of Limitations to the whole declaration. The plaintiff having signed judgment for want of a plea: *Held*, that the judgment was irregular, inasmuch as the pleas were sanctioned by the original rule. *Fryer v. Andrews*, 1 Exch. R. 471.

See *Tender*, 1.

SLANDER.

Variance.—*Amendment*.—A declaration stated, that the plaintiff was a surgeon and accoucheur, and in that character had attended one *R.* during her confinement; that the defendant, in a discourse which he had with *R.*, of and concerning the plaintiff, and of and concerning the plaintiff in relation to his said profession and business, spoke of and concerning, &c., the following words:—"I wonder you had him to attend you. Do you know him? He is not an apothecary; he has not passed any examination; he is a bad character; none of the medical men here will meet him. There have been many inquests had upon persons who have died because he attended them." The defendant pleaded not guilty. At the trial the latter words, as to the inquests, were not proved, but the words proved were, "several have died that the plaintiff had attended, and there have been inquests held on them." The judge amended the declaration accordingly, and a verdict was found for the plaintiff: *Held*, on motion for a new trial, that the judge was justified in making the amendment; also, that the words as amended were actionable, without the aid of any innuendo to explain them by reference to extrinsic circumstances.

Semble, that the words, "he is a bad character, none of the medical men here will meet him," alone were actionable, as importing the want of a necessary qualification for a surgeon in the ordinary discharge of his professional duties. *Southee v. Denny*, 1 Exch. R. 196.

Case cited in the judgment: *Woolnoth v. Meadows*, 5 East, 463.

SPECIAL PLEA.

Judgment.—To a declaration containing a count on a bill of exchange, and a count on an account stated, the defendant, who was under terms of pleading *issuably*, pleaded, "that he did not indorse the bill," without confining the plea in terms to the first count. To the other count he pleaded *non assumpsit*. The plaintiff having signed judgment, on the ground that the first plea was pleaded to the whole declaration, and therefore, *non assumpsit*, the

Court set aside the judgment as irregular. *Bousfield v. Edge*, 34 L. O. 493.

TENDER.

1. *Several counts.*—*Proof of tender.*—Assumpsit for use and occupation, work and labour, money lent and money paid, and on an account stated, with a single promise and breach. Several pleas, as to all but 7*l.*, parcel of the moneys in the declaration mentioned; and a single plea, as to 7*l.*, parcel of the moneys in the declaration mentioned, of tender and payment of the sum into Court. The pleas did not distinguish the counts. Plaintiff traversed the tender: *Held*, that proof of a single tender of 7*l.*, in respect of the use and occupation, satisfied the plea of tender. *Robinson v. Ward*, 8 Q. B. 920.

2. A declaration in debt contained two counts, each demanding the sum of 26*l.* Plea as to 5*l.* parcel, &c., a tender of 5*l.* before action brought. Replication, that at the time of the tender, the sum of 13*l.* 15*s.* was due from the defendants to the plaintiff as one entire sum, and on one entire contract not divisible from the sum of 5*l.*; that afterwards the plaintiff demanded the sum of 13*l.* 15*s.*, but the defendants refused to pay the same: *Held*, on demurrer, that the replication was good; as a tender of a part of an entire debt is bad in law; and if the defendants relied on a set-off, &c., it should have been joined. *Dixon v. Clark*, 5 D. & L. 155.

Cases cited in the judgment: *Cotton v. Godwin*, 7 M. & W. 147; *Brandon v. Newington*, 3 Q. B. 915; *Hesketh v. Fawcett*, 11 M. & W. 356; *Hume v. Peploe*, 8 East, 168; *Poole v. Tambridge*, 2 M. & W. 223.

TRESPASS.

Justification.—Declaration in trespass alleged that the defendant assaulted and kicked the plaintiff and broke his leg. The defendant pleaded that the plaintiff was misconducting himself in a public-house, and that the defendant turned him out, and because the plaintiff resisted, the defendant was compelled to resort to force, and in so doing necessarily committed the trespass complained of. Replication *de injuriâ*. The evidence was, that the defendant removed the plaintiff from the house, and at the door a struggle ensued, and the leg of the plaintiff was broken. The learned judge told the jury that the question was, whether the defendant was justified in turning the plaintiff out, and that the fact of the broken leg was immaterial.

Held, that the direction of the learned judge was right, that if the plaintiff intended to claim damages for the broken leg, he ought, after the justification set up in the plea, to have new assigned that injury as a ground of damages, and not having new assigned it, he could not claim anything for that which was in substance a new trespass. *Moore v. Allard*, 35 L. O. 193.

TROVER.

Joint ownership.—To a declaration in trover, defendant pleaded that, before and at the time of the committing, &c., he and plaintiff were

jointly and together the owners and proprietors of the chattel.

Held, bad, on special demurrer, because, if the conversion was denied, the plea amounted to not guilty, and if it was confessed, the plea could be understood only as confessing a destruction of the chattel, which was not justified. *Higgins v. Thomas*, 8 Q. B. 908.

TRUSTEES.

Devise.—*Issue under rejoinder "ne granta pas."*—To trespass for breaking and entering the plaintiff's close, the defendant pleaded,—1st, the use of a right of way for 20 years; 2ndly, a user of the way for 40 years. Replication to the former plea, that the corporation of L., being seised in fee of the *locus in quo*, by indenture of feoffment demised it to H. for three lives and 21 years; that the corporation delivered seisin to H., who became and was seised of the said close during the period of 20 years in the said plea mentioned, and the said term so demised was existing in full force, and not expired, surrendered, or otherwise become void. The replication to the other plea stated, in similar terms, the demise of the *locus in quo* by the corporation of L. to H., and then alleged that H., being so seised of the *locus in quo*, by indenture between C. of the 1st part, H. of the 2nd part, and M. and W. of the 3rd part, granted to M. and W. a right of way over the *locus in quo*. Rejoinder to replication to 1st plea, that the said term so demised was not existing during the period of 20 years in that plea mentioned, *modo et formâ*. Rejoinder to replication to 2nd plea, that H. did not grant to M. and W. the right of way, *modo et formâ*. At the trial, it appeared that the corporation of L., being seised in fee of the *locus in quo*, by indenture of the 17th February, 1800, demised to H. for three lives and 21 years. By indenture of the 23rd July, 1803, after reciting the above indenture, H. assigned to C. the demised premises for securing payment of 1,200*l.*, lent by C. to H. By indenture of the 9th of February, 1804, after reciting the demise to H. by the corporation, the assignment by H. to C., and also reciting that H. had agreed to sell part of the land to M. and W. for a sum out of which the sum due from H. should be paid to C.; C., at the request of H., bargained, sold, assigned, and transferred, and H. granted, bargained, sold, assigned, and transferred to M. and W. part of the demised premises, together with the right of way in question. In 1812, H. died, having made his will, whereby, after bequeathing his estates to his wife for life, he devised the same, after her death, to J. and M., in manner following,—“upon trust to pay and apply the rents, issues, and profits, of the same to and for the life and benefit of my daughter Mary, and her assigns, during her life, and independent of her present or any future husband; and from and after the decease of my said daughter, I give, devise, and bequeath my real and leasehold estates as aforesaid unto and equally among all and every the children of my said daughter Mary, share and share alike, as tenants in common; and if

the said Mary shall die without leaving lawful issue her surviving, then I give, &c., the same to my granddaughter Ann." In 1816, the wife of H. died, and by indenture of the 11th Dec., 1817, the corporation of L. assigned to the trustees the reversion in fee simple of the *locus in quo*.

Held, 1st, that the plaintiff was entitled to a verdict on the rejoinder to the replication to the 1st plea, since the trustees under the will of H. took only an estate during the life of the testator's daughter, and therefore the lease for life did not merge in the grant of the reversion; 2ndly, that the rejoinder, "*ne granta pas*," only put in issue the fact of a grant, and that the seisin of H. was admitted. *Cooke v. Blake*, 1 Exch. R. 220.

Cases cited in the judgment: *Cowlishaw v. Cheslyn*, 1 C. & J. 48; *Hudson v. Jones*, Salk. 90; *Bishop of Meath v. Marquis of Winchester*, 10 Bligh, 330; 4 C. & F. 445.

UNCERTAINTY.

Blanks. — Declaration, containing three counts, commenced, that "A. B., by h attorney, complains, &c., who h been summoned;" 2nd count, for work and materials "provided for defendant, at h request." Breach in last count, that "defendant ha not paid the same:" *Held*, on special demurrer, that 1st and last counts were good; 2nd bad. *Berdoe v. Spittle*, 1 Exch. R. 175.

USURY.

Interest in land. — *Fraud*. — *Replication de injuriâ*. — *Duplicity*. — Covenant for payment of 250*l.* and interest on demand. The defendant pleaded, that the covenant was entered into in pursuance of an usurious contract, by which the defendant agreed to pay more than 5*l.* per cent. by way of interest, and that the payment was secured by a deed, whereby the defendant bargained and sold to the plaintiff, by way of security, certain personal chattels, and also "*the crops of grass then growing on certain lands*." Replication, that the contract was entered into after the passing of the 2 & 3 Vict. c. 37: *Held*, on general demurrer, that the plea was good, and the replication bad; for though the term "crops of growing grass" might mean crops to be secured by the owner of the soil, and delivered as a personal chattel, yet the plea afforded a good *prima facie* answer to the action, it being sufficient for the defendant to show that the contract was usurious within the 12 Anne, s. 2, c. 16; and if the plaintiff relied upon the 2 & 3 Vict. c. 37, as excepting the case from the operation of that act, he should reply, that the contract was entered into after the passing of the stat. of Vict., and that the security did not relate to land. The defendant also pleaded a general plea of fraud, to which the plaintiff replied *de injuriâ*: *Held*, a good replication.

Another plea set out a power of sale in default of payment of 250*l.*, and interest, and averred that, in pursuance thereof, the plaintiff sold and disposed of the goods, chattels, and

effects, in the indenture mentioned, for the purpose of repaying, satisfying, and discharging the 250*l.*, interest, and costs; and the plaintiff, by means of such sale and disposal, had and received 500*l.*, being the proceeds and profits of the sale and disposal, and thereby and therewith repaid, satisfied, and discharged the sum of 250*l.*, interest and costs. And the plaintiff, with the consent of the defendant, received the said proceeds and profits of the sale and disposal, in full satisfaction of the said sum of 250*l.*, interest and damages.

Replication, that the plaintiff did not sell or dispose of the said several goods, chattels, and effects, nor did the plaintiff, by means of such sale and disposal, have or receive the said monies, being the proceeds and profits of the said sale and disposal, nor did the plaintiff thereby or therewith, repay, satisfy, or discharge the sum of 250*l.*, interest, &c., nor did the plaintiff accept or receive the said proceeds and profits of the sale and disposal in full satisfaction and discharge, *modo et formâ*: *Held*, on special demurrer, that the replication was not bad for duplicity. *Washbourn v. Burrows*, 1 Exch. R. 107; S. C. 5 D. & L. 105.

Cases cited in the judgment: *Thibault v. Gibson*, 12 M. & W. 88; *Cooper v. Garbett*, 13 M. & W. 33.

VARIANCE.

See *Slander*.

WHARFINGER'S LIABILITY.

Declaration in case stated, that the defendant was possessed of a wharf for the loading and unloading of vessels on the banks of the Thames, near which there was certain wood-work, before then placed by the defendant, and then being upon the bottom of the river, over which at certain states of the tide, the vessel of the plaintiff thereafter mentioned would float, but at others not; that, while the defendant was so possessed of the wharf, the plaintiff was possessed of a vessel then being, by the sufferance and permission of the defendant, at and alongside the said wharf, for reward to the defendant in that behalf; and the defendant then had the management and control of the said wharf, and the mooring and stationing of vessels at and near the same while they were at the said wharf, for the purpose of using the same. Breach, that the defendant unskillfully and negligently placed, moored, and stationed the plaintiff's vessel in the part of the river near the said wharf, and over the said wood-work, and unskillfully and negligently detained the vessel there for a long time, until, on the natural fall of the tide, she fell and lodged against the said wood-work, and was damaged thereby: *Held*, on error, after verdict and judgment for the plaintiff, (upon a plea denying that the defendant had the management and control of the wharf, and the mooring, and stationing of ships alongside it, &c., *modo et formâ*.) that the declaration sufficiently stated a duty in the defendant safely to moor and station the plaintiff's vessel, and a breach of that duty. *Curling v. Wood*, 16 M. & W. 628.

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—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

PROPOSED MINISTER OF JUSTICE.

AMONGST the several important points of inquiry which came before the Select Committee of the House of Commons on the Courts of Law and Equity, was that of the expediency of appointing a *Minister* or “Secretary of State for the Affairs of Justice.” That some remedy should be provided for the evils which arise both from the neglect of useful amendments in our legal system, and from the crude and defective alterations which too often take place,—the public and the profession equally admit, and indeed loudly demand.

Anybody, says Lord Langdale, in his evidence before the Select Committee, who considers the present state of things, and how much is left to chance;—how frequently important acts of parliament are passed in such a state that it is almost impossible for the Courts to act upon them;—what blunders are continually made in legislation;—how it becomes necessary to repeal in one year what has been done in the former year, because it is manifestly erroneous;—When we see all this, we must be of opinion that it is absolutely necessary to endeavour to establish some better mode of proceeding,—to provide an authority for the collection of all the required information,—and to “bring to the rescue” all the skill and experience

which can be obtained for the purpose of securing more prudent and careful legislation.

No sooner is a defect discovered, or what appears to be a conflicting course of proceeding, than it ought (says his lordship) to be reported to the proper authority, whose duty it should be to consider of a remedy. All that at one time belonged to the Lord Chancellor in the way of superintending the general course of justice, and all which has since crept into the office of the Secretary of State of the Home Department or the Treasury; and a great many other most important duties not hitherto sufficiently considered, ought to go into this office. It would be a very laborious and busy office, and afford something like a hope of improving the law and the administration of justice upon a *steady and prudent* plan.

Several questions were put to Lord Langdale by members of the committee, regarding the best mode of superintending the several officers of the Court and ensuring the discharge of their duties. His lordship stated that, in his opinion, there ought to be some person connected with the government, who should have the superintendence of the Courts of Justice,—just as government ought to exercise the superintendence of all other departments where the most efficient and active service was required.

* Lord Brougham, in his speech of the 12th May last, on Legislation and Law, has given a long and curious list of parliamentary blunders.

“No steady and regular superintendence,” he said, “was exercised;—no machinery for it was provided; the Courts of Justice were left

very much to chance. If a complaint were made, it was investigated and dealt with probably in a satisfactory manner; but there might be very many causes of complaint and no complainant and no discovery, unless there were a vigilant superintendence and an inquiry made by proper authority.

"My opinion is, that you want an office of government in which the affairs of justice should be the particular object of attention. You want a person who can at all times be ready to apply himself to the investigation of all things relating to the conduct of the officers of justice; and unless you have that, you are and must be without some of the benefits which the government might well secure for the country."

This officer might be called, not by the name of "Minister of Justice," but, as his lordship suggested, without any prejudice to our usual habits, "the Secretary of State for the Affairs of Justice." "Such a minister might be charged with the whole superintendence over the establishment and organisation of the Courts, their official arrangements, and everything belonging to them, except matters judicial. The supervision should have in view two objects:—the one—the discipline, management, and official arrangements of the legal and judicial departments;—and the other, (distinct from, though closely connected with the first,) the collecting and arranging of all the information which is requisite to enable the Houses of Parliament to legislate with prudence and caution."

His lordship, being asked whether a system of supervision under the authority of one of the judges would not secure the efficiency of all the officers, said that such superintendence might go to a considerable extent, though by no means to that efficient extent which he should wish.

"Judges had not the leisure, and in his opinion were not the persons who ought to legislate, even in matters of practice. Important general orders and regulations ought to be framed and sanctioned by another authority, after advising with the judges, and hearing from them all the suggestions which they had to make, or all the reasons they had to offer; but it was not their proper function to make the law, even of practice. At present they were the only persons to do it, and upon whom parliament had imposed the duty by giving the power. For the most part they had been willing to do what they could in performance of that duty, but it had taken them away from their more proper business."

"A superintendence over all the Courts, and every branch of the law, is required. Everything connected with the law requires to be subjected to proper inquiry and autho-

ity, and everything which ought to be laid before parliament should be laid before it regularly and officially, in order that it may usefully consider what should from time to time be proper to be done, and how best to do it."

"It was often necessary to distinguish and consider what ought never to be tried without enactment, and what ought rather to be attempted by cautious and vigilantly superintended experiment. Those who considered this subject most attentively were best aware how difficult it was to make laws or establish rules of practice,—how much information was required, and what precautions were to be used, and how necessary it was that parliament should be constantly supplied with the fullest and most accurate information upon all those subjects which were required for making and improving laws upon a steady and safe principle. Parliament had great need of the assistance of competent persons whose whole attention should be devoted to this subject."

These opinions which, coming from the Master of the Rolls, are entitled to, and will doubtless receive, the greatest attention of the legislature and the profession in general, have been espoused by Lord Brougham, who, in his elaborate speech last Session, on legislation and the law,^b thus expresses himself:—

"I have often argued the necessity of a board being formed of skilful professional men, not to supersede, but to aid both houses of parliament, in the preparation of public bills. It is a task, which no one man, how gifted soever, can hope satisfactorily to execute, because several men are required, of different habits of thinking, of various turns of mind, to sift the subjects successively dealt with in our numerous statutes. At the head of this board should be the minister of justice or his deputy. The necessity of this office I have repeatedly urged."

"The judicial powers of the Chancellor must no longer be left in the hands of a judge holding his office during pleasure, and the first member of a political party, as well as of a ministerial body. There remain abundant duties for that high officer after this anomaly in our system is removed. He should be the minister of justice; a functionary much wanted in this country; the want of whom, indeed, meets us at every step, whether we regard the amendment of the law or its due administration; and I rejoice to find that on this important question we have now the sanction of my noble friend the Master of Rolls' high authority."

^b A corrected report of this speech has been published by Ridgway.

IMPRISONMENT UNDER THE COUNTY COURTS ACT.

THE number of the Common Bench Reports just published, contains a very full report of the arguments and judgment of the Court of Common Pleas, in the case *Ex parte Thomas Kinning*,^a to which the attention of our readers has already been directed, but the facts of which it will be convenient briefly to recapitulate.

In December, 1846, one Townley recovered a judgment against Kinning in the Sheriff's Court of London, for a debt of 19*l.* 19*s.*, besides 3*l.* 12*s.* costs of suit, and in a few days after Kinning was summoned before Mr. Bullock, the Judge of the Sheriffs' Court, under the Small Debts Act, (8 & 9 Vict. c. 127, s. 1.) to show cause why he had not paid the money so recovered; and it then appearing to the judge, on the admission of Kinning, that he had the means of paying the debt and costs by instalments, an order was made, on the 12th December, for the payment by instalments of 2*l.* per month. On the 12th February, following, upon its being duly proved that Kinning had not paid the first instalment due on the 12th January, the judge, without proof or inquiry as to the continuing ability of Kinning, made an order for his imprisonment for 40 days. To determine the validity of this order, Kinning was brought by Habeas Corpus before the Court of Queen's Bench, and the principal point raised was, that under the statute on which the order of imprisonment was founded, the debtor was entitled to be summoned to show cause why he should not be committed, and that Kinning was committed without such summons or hearing. After argument, Lord Denman and Mr. Justice Erle were of opinion that the debtor was not, and Justices Patteson and Coleridge that he was, entitled to be heard before commitment. The Court of Queen's Bench having been equally divided, the prisoner's application to that Court was unavailing, and a second writ of Habeas Corpus was issued, returnable before the judges of the Court of Common Pleas. The learned judges of that Court were unanimously of opinion that the debtor should have an opportunity of being heard before an order of commitment was made against him for disobedience to the order requiring payment of the debt and costs by instalments; and it

appearing that he was committed without any opportunity of being heard as to his ability to pay the instalment of 2*l.*, the Court ordered the prisoner to be discharged.

The importance of this decision arises from the circumstance, that the provisions of the 8 & 9 Vict. c. 127, have been embodied, with some slight variation, in the New County Courts' Act, (9 & 10 Vict. c. 95,) and the learned reporter, (we suppose Mr. Serjeant Manning, himself one of the judges of the County Courts,) has appended to the report some very valuable notes, in reference to the construction of these provisions, and the practice founded upon them. The learned reporter states, that since the decision of the Court of Common Pleas in Kinning's Case, "many of the County Courts have discontinued, in all cases, the practice of making orders for the payment of money by instalments, with a committal in case of non-payment." It is truly observed, that the 9 & 10 Vict. c. 95, s. 99, gives the power of imprisonment to a judge of the County Court in seven different cases:—first, where the debtor, when summoned, does not attend; secondly, if he refuses to disclose his property or transactions; thirdly, if his answers are unsatisfactory; fourthly, if he has contracted the debt fraudulently; fifthly, if he has contracted the debt without reasonable prospect of being able to pay; sixthly, if he has concealed or made away with his property; and lastly, if, having the means of payment by instalments or otherwise, he has been ordered so to pay, and has not paid. The question in Kinning's case arose upon the last of these provisions. Where any of the first six grounds of committal occurs, and under the last clause, where the debtor, being of ability to pay, has withheld payment before he is summoned, the judge has unquestionably the power of ordering an immediate imprisonment. Whether the judge has the power of making a qualified order of immediate commitment, defeasible upon payment of the debt, &c., was not decided in Kinning's case, the determination in which proceeded on the principle, that the act of the judge of the Inferior Court in granting the warrant was a judicial, and not a ministerial act, and that justice required that the party most interested should have an opportunity of being heard before the judge exercised his discretion. The defendant was not to be committed under the act because he did not pay a debt, but because he was guilty of misconduct meriting punishment. The

^a 4 Com. Ben. Rep. p. 507.

non-payment of the debt might be either a misfortune or an act of delinquency, but it was only an act of delinquency in the event of the debtor being of ability to pay, and it was right before punishment was inflicted that the debtor should be heard on that point.

The decision of the Court of Common Pleas in this case is plainly conformable to the established principles of law and justice, but it has been complained of as tending materially to abridge the utility of the County Courts.

be made in order to qualify persons to be registered as voters in the election of members of parliament: Be it enacted, That after the 1st day of January, 1849, no person shall be required, in order to entitle him to have his name inserted in any list of voters for any city, town, or borough in England, to have paid any poor's rates or assessed taxes, except such as shall have become payable from him previously to the 5th day of January in the same year; and that no person shall be entitled to be on any such list of voters, unless the poor's rates and assessed taxes payable from him previous to the 5th day of January, shall be paid on or before the 20th day of July next following.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

IN THE LAST SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the last Session of Parliament, printed in this and the preceding volume of the *Legal Observer*, are as follow :—

- Extending Time for making Railways, 35 L. O. 204.
- Regulating the Queen's Prison, ib. 555.
- North American Passengers, ib. 581.
- Crown and Government Security, ib. 600.
- Oaths in Chancery, p. 7, *ante*.
- Stamp Duties Assimilation, p. 8, *ante*.
- Trial of Controverted Elections, p. 23, *ante*.
- Removal of Aliens, p. 182, *ante*.
- Annual Indemnity, p. 221, *ante*.
- Suspension of the Habeas Corpus Act (Ireland), p. 280, *ante*.
- Poor Removal, p. 298, *ante*.
- Commons Inclosure, p. 324, *ante*.
- Game Certificates, p. 341, *ante*.
- Joint-Stock Companies, p. 357.
- Law of Elections, p. 377.
- Law of Bankruptcy, p. 377.
- Administration of Justice by Magistrates out of Sessions, p. 397.
- Administration of Criminal Law, p. 403.
- Release of Bankrupts, p. 423.
- Evidence of Proclamations of Fines, p. 424.
- The Protection of Justices, p. 442.

PARLIAMENTARY ELECTORS RATES.

11 & 12 VICT. c. 90.

An Act to regulate the Times of Payment of Rates and Taxes by Parliamentary Electors. [August 31, 1848.]

Time at which rates and taxes must be paid to entitle parties to be on the list of voters for members of parliament.—Whereas it is expedient to make further regulation as to the payment of rates and taxes now necessary to

PAYMENT OF DEBTS OUT OF REAL ESTATE.

11 & 12 VICT. c. 87.

An Act to extend the Provisions of an Act passed in the First Year of His late Majesty King William the Fourth, intituled An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate. [August 31, 1848.]

1. 11 G. 4, and 1 W. 4, c. 47.—*Recited provision to extend to lands, &c., of a deceased debtor, in certain cases.*—Whereas by an act passed in the 1 W. 4, intituled "An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate," it was (amongst other things) enacted, that where any lands, tenements, or hereditaments had been or should be devised in settlement by any person or persons whose estate under the said act now in recital, or by law, or by his or their will or wills, should be liable to the payment of any of his or their debts, and by such devise should be vested in any person or persons for life or other limited interest, with any remainder, limitation, or gift over which might not be vested, or might be vested in some person or persons from whom a conveyance or other assurance of the same could not be obtained, or by way of executory devise, and a decree should be made for the sale thereof for the payment of such debts or any of them, it should be lawful for the Court by whom such decree should be made to direct any such tenant for life, or other person having a limited interest, or the first executory devise thereof, to convey, release, assign, surrender, or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers, or in such manner as the said Court should think proper; and every such conveyance, release, surrender, assignment, or other assurance should be as effectual as if the person who should make and execute the same were seised or possessed of the fee simple or other whole estate so to be sold: And whereas the hereinbefore recited provision of the said act does not extend to the case of lands, tenements, or hereditaments of a deceased debtor which are by descent or otherwise than by devise vested in the heir or co-heirs of such debtor, subject to an executory

devise over in favour of a person or persons not existing or not ascertained, and it is expedient that the said provision of the said act should be extended to such case: Be it therefore enacted, That the said hereinbefore recited provision of the said act shall extend and is hereby extended to any case in which any lands, tenements, or hereditaments of any deceased person shall by descent or otherwise than by devise be vested in the heir or co-heirs of such person, subject to an executory devise over in favour of a person or persons not existing or not ascertained; and in any such case it shall be lawful for the Court mentioned in the said recited provision to direct such heir or co-heirs, notwithstanding such heir or such co-heirs, or any of them, may be an infant or infants, to convey, release, assign, surrender or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers, or in such manner as the said Court shall think proper; and every such conveyance, release, surrender, assignment, or other assurance shall be as effectual as if the heir or co-heirs who shall make and execute the same was or were seised or possessed of the fee simple or other whole estate so to be sold, and, if an infant or infants, was or were of full age.

2. That this act may be amended or repealed by any act to be passed during this present Session of Parliament.

NOTICES OF NEW BOOKS.

The Text Book of the Constitution. By E. S. CREASY, M. A., Barrister-at-Law. London: Bentley. 1848. Rp. 63.

THIS is a small pamphlet on a large subject, with a somewhat ambitious title. It comprises *Magna Charta*, the *Petition of Right*, and the *Bill of Rights*; with historical comments and remarks on the present political emergencies. Mr. Creasy quotes the words of Lord Chatham,—“*Magna Charta*, the *Petition of Right*, and the *Bill of Rights*, form the code which I call the *Bible of the English Constitution*.” The time has been well chosen for directing attention to the great principles of the *British Constitution*, as set forth in the three famous statutes which the author has quoted, and the effect of which he thus sums up:—

“The government of the country by an hereditary sovereign, ruling with limited powers, and bound to summon and consult a parliament of hereditary peers, and of elective representatives of the commons.

“That the subject's money shall not be taken by the sovereign, unless with the subject's consent, expressed by his representatives in parliament.

“That no man be arbitrarily fined or imprisoned, or in any way punished, except after a lawful trial.

“Trial by jury.

“That justice shall not be sold or delayed.”

Having given these three constitutional statutes verbatim, with many notes and comments, Mr. Creasy adds the *Habeas Corpus Act* and the *Act of Settlement*. His remarks on these foundations of our political system are ably and forcibly penned, and whilst he upholds the rectitude and policy of the general principles as by law established, he is disposed to recommend considerable alterations in the details. He thus propounds his advice:

“From the corrupt boroughs and smaller counties part away 30 members. Divide Great Britain into 50 districts, and let each district return one member, for whom no property qualification shall be required. Let him be paid wages. Give a vote for the district member to every male of 21 years, who has no vote for county or borough, who has resided a year in the district, has not been convicted of a criminal offence for the last seven years, nor received parish relief for the last year, and who is able to read and write. Let the voting be by ballot.”

Such is the substance of the author's political advice, which our readers will deem not a little curious; it is unnecessary at present to accompany it with any comment of our own. We shall, no doubt, next Session have divers nostrums of political reform, and although we eschew party politics, we shall vigilantly watch any attempted inroads on the main principles of the constitution.

PROPOSED IMPROVEMENTS IN CONDUCTING PARLIAMENTARY BUSINESS.

THE evidence given before the Committee of the House of Commons, on the delays in the progress of Bills before Parliament, is very remarkable. It shows that the passing of any measure may be almost indefinitely postponed by a comparatively small minority. There are no less than eighteen stages of a bill, on all of which a debate may arise, protracted by motions of adjournment, motions for the previous question, &c., &c. In answer to questions on the subject, the Speaker enumerated the various stages through which each bill has to pass, as follow:—

“1. That leave be given to bring in the bill.

"2. That this bill be read a first time.

"3. That the bill be read a second time on a day named.

"4. That this bill be now read a second time.

"5. That this bill be committed on a day named.

"6. That this bill be committed.

"7. That the Speaker do now leave the chair.

Then, after it has passed through the committee,

"8. That the report be received on a named day.

"9. That this report be now received.

"10. That this report be now read.

"11. That these amendments be now read a second time.

"12. That the house agree with their committee in the said amendments.

"13. That this bill be engrossed.

"14. That this bill be read a third time on a named day.

"15. That this bill be now read a third time.

"16. That this bill do pass.

"17. That this be the title to the bill.

"18. That Messrs. A. & B. do carry this bill to the Lords."

The forbearance and sense of propriety of the members have generally prevented the abuse of these forms; but the enormous increase of the business, both public and private, and the much larger number of members who now take part in the debates,—some to an unconscionable extent,—with the consequent prolongation of the Session, and the delay of many important measures, have rendered it necessary to revise the Orders of the House. It appears that next Session some material alterations will be considered for the purpose of expediting and more satisfactorily conducting the business of legislation. The recommendations of the Committee are as follow:—

"That when leave shall have been given to bring in a bill, the questions of the first reading and printing shall be decided without debate, or amendment moved.

"That when an order of the day shall have been read for the house to resolve itself into a committee of the whole house upon a bill which has already been considered in committee, Mr. Speaker shall forthwith leave the chair without any question put, unless a member shall have given notice of an instruction to such committee; but such resolution shall not apply to the case where the bill shall have passed through committee *pro forma* for the purpose of being reprinted.

"That when after due notice it shall have been ordered by the house, that orders of the day have precedence of notices of motions, the house may resolve itself into a committee of supply, or ways and means.

"That when any committee of the whole

house shall have gone through a bill, and made amendments thereto, the chairman of such committee shall report the same forthwith; and that a day be appointed for the further consideration of such report.

"That on the consideration of the report of a bill any new clauses proposed to be added be first offered; and the house shall then proceed to consider the bill, and the amendments made by the committee.

"That, in the case of an adjourned debate, it would be of advantage that the debate should be resumed on the next sitting day, and should have precedence over all other business. Your committee is at the same time aware that there might be public inconvenience in laying down any strict rule on the subject, fettering the discretion of the house, and compelling the resumption of an adjourned debate in preference to other business as a matter of course. They content themselves with expressing a strong opinion that it would be advisable, both with reference to the satisfactory discussion of the subject under consideration and to the general progress of public business, that debates should, as far as possible, be continued from day to day; and that there should be such a relaxation of the rules of the house in respect of the precedence of notices and orders of the day as to leave the house entire liberty to give precedence on the following day to an adjourned debate.

"That with respect to any bill brought to this house from the House of Lords, or returned by the House of Lords to this house with amendments, whereby any pecuniary penalty, forfeiture, or fee, shall be authorized, imposed, appropriated, regulated, varied, or extinguished, this house will not insist on its ancient and undoubted privileges in the following cases:—

"1st. When the object of such pecuniary penalty or forfeiture is to secure the execution of the act, or the punishment or prevention of offences.

"2nd. Where such fees are imposed in respect of benefit taken, or service rendered under the act, and in order to the execution of the act, and are not made payable into the Treasury or Exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus.

"3rd. When such bill shall be a private bill or a local or personal act.

"Your committee having considered the provisions of the Parliamentary Proceedings Adjournment Bill, do not think it advisable to recommend it for adoption by the house.

"Your committee trust that these alterations will be in themselves useful improvements.

"But it is not so much on any new rules, especially restrictive rules, that your committee would desire to rely for the prompt and efficient despatch of business by the house. The increasing business calls for increased consideration on the part of members in the exercise of their individual privileges.

"Your committee would desire to rely on

the good feeling of the house, and on the forbearance of its members, and on a general acquiescence in the enforcement by the Speaker of that established rule of the house which requires that members should strictly confine themselves to matters immediately pertinent to the subject of debate.

Your committee, however, ventures to express an opinion that the satisfactory conduct and progress of the business of the house must mainly depend upon her Majesty's Government, holding, as they do, the chief control over its management.

"They believe that, by the careful preparation of measures, their early introduction, the judicious distribution of business between the two houses, and the order and method with which measures are conducted, the government can contribute in an essential degree to the easy and convenient conduct of business. They trust the efforts of the government would be seconded by those of independent members, and that a general determination would prevail to carry on the public business with regularity and despatch."

In regard to the Bills for the Alteration or Amendment of the Law, there is, as we have often pointed out, great room for improvement. Some measures brought in late in the Session are too much hurried, in order to serve the purposes of the promoters or suggesters. All Law bills should be brought in before Easter, and referred to select committees, before which the practitioners and officers of the Courts should be heard, and indeed invited to attend, and the judges should always be consulted before any important act is allowed to pass.

LIST OF PUBLIC GENERAL ACTS.

11 & 12 VICT.

1. An Act to facilitate the Completion, in certain Cases, of Public Works in Ireland.

2. An Act for the better Prevention of Crime and Outrage in certain Parts of Ireland until the 1st day of December 1849, and to the end of the then next Session of Parliament.

3. An Act to give further Time for making certain Railways.

4. An Act to apply the Sum of 8,000,000*l.* out of the Consolidated Fund to the Service of the year 1848.

5. An Act to suspend for Five Years the Operation of certain Parts of an Act of the 10th year of her present Majesty, for making further Provisions for the Government of the New Zealand Islands; and to make other Provisions in lieu thereof.

6. An Act to make further Provision for One Year, and to the End of the then next Session of Parliament, for the Carriage of Passengers by Sea to North America.

7. An Act to amend an Act for consoli-

the Queen's Bench, Fleet, and Marshalsea Prison, and for regulating the Queen's Prison.

8. An Act to continue for Three Years the Duties on Profits arising from Property, Professions, Trades, and Offices.

9. An Act to continue for Three Years the Stamp Duties granted by an Act of the Fifth and Sixth Years of her present Majesty, to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same.

10. An Act for empowering certain Officers of the High Court of Chancery to administer Oaths and take Declarations and Affirmations.

11. An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.

12. An Act for the better Security of the Crown and Government of the United Kingdom.

13. An Act for amending the Law for the leasing of Mines in Ireland.

14. An Act for authorizing a Borough Police Superannuation Fund.

15. An Act for the Regulation of her Majesty's Royal Marine Forces while on shore.

16. An Act for raising the Sum of 17,946,500*l.* by Exchequer Bills, for the Service of the year 1848.

17. An Act to amend the Act of the present Session to facilitate the Completion of Public Works in Ireland.

18. An Act to remove certain Doubts as to the Law for the Trial of controverted Elections.

19. An Act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those Purposes respectively until the 25th day of March, 1849.

20. An Act to authorize for One Year, and to the End of the then next Session of Parliament, the Removal of Aliens from the Realm.

21. An Act to consolidate and amend the Laws relating to Insolvent Debtors in India.

22. An Act for granting Relief to the Island of Tobago, and for aiding the Colonies of British Guiana and Trinidad in raising Money for the Promotion of Immigration of free Labourers.

23. An Act to alter and amend an Act passed in the 3rd year of the reign of his Majesty King George the Fourth, intituled "An Act to Incorporate the Contributors for the Execution of a National Monument in Scotland, to commemorate the Naval and Military Victories during the late War."

24. An Act for disfranchising the Freemen of the Borough of Great Yarmouth.

25. An Act to extend the Powers given by former Acts for purchasing or hiring Land in connexion with or for the Use of Workhouses in Ireland; and for providing for the Burial of the Poor.

26. An Act to remove Difficulties in the Appointment of Collectors of Grand Jury Cess in Ireland in certain Cases, and to remove Doubts as to the Jurisdiction of the Divisional Justices

- of the Police District of Dublin Metropolis relating to the Recovery of Poor Rates, and other Cases.
27. An Act to authorize the Inclosure of certain Lands, in pursuance of the Third, and also of a Special, Report of the Inclosure Commissioners for England and Wales.
28. An Act to amend the Law of Imprisonment for Debt in Ireland, and to improve the Remedies for the Recovery of Debts and of the Possession of Tenements situate in Cities and Towns, in certain Cases.
29. An Act to enable Persons having a Right to kill Hares in England and Wales to do so, by themselves or Persons authorized by them, without being required to take out a Game Certificate.
30. An Act to enable all Persons having at present a right to kill Hares in Scotland to do so themselves, or by Persons authorized by them, without being required to take out a Game Certificate.
31. An Act to amend the Procedure in respect of Orders for the Removal of the Poor in England and Wales, and Appeals therefrom.
32. An Act to facilitate the Collection of County Cess in Ireland.
33. An Act to apply the Sum of 3,000,000*l.* out of the Consolidated Fund to the Service of the Year 1848.
34. An Act to amend certain Acts in force in Ireland in relation to Appeals from Decrees and Dismisses on Civil Bills in the County of Dublin and County of the City of Dublin.
35. An Act to empower the Lord Lieutenant or other Chief Governor or Governors of Ireland to apprehend, and detain until the 1st day of March, 1849, such persons as he or they shall suspect of conspiring against her Majesty's Person and Government.
36. An Act for the Amendment of the Law of Entail in Scotland.
37. An Act to amend the Law relative to the Assignment of Ecclesiastical Districts.
38. An Act to authorize the West India Relief Commissioners to grant further Time for the Repayment of Monies advanced by them in certain Cases.
39. An Act to facilitate the raising of Money by Corporate Bodies for building or repairing Prisons.
40. An Act to alter the Mode of assessing the Funds leviable in the County of Inverness, for making and maintaining certain Roads and Bridges and other Works in the Highlands of Scotland.
41. An Act to amend the Laws relating to the Ecclesiastical Unions and Divisions of Parishes in Ireland.
42. An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with indictable Offences.
43. An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders.
44. An Act to protect Justices of the Peace from vexatious Actions for Acts done by them in execution of their Office.
45. An Act to amend the Acts for facilitating the winding up the Affairs of Joint-Stock Companies unable to meet their pecuniary Engagements; and also to facilitate the Dissolution and winding up of Joint Stock Companies and other Partnerships.
46. An Act for the Removal of Defects in the Administration of Criminal Justice.
47. An Act for the Protection and Relief of the destitute Poor evicted from their Dwellings in Ireland.
48. An Act to facilitate the Sale of Incumbered Estates in Ireland.
49. An Act for regulating the Sale of Beer and other Liquors on the Lord's Day.
50. An Act to empower the Commissioners of Her Majesty's Woods to remove the Colonade in the Regent's Quadrant.
51. An Act to provide additional Funds for Loans for Drainage and other Works of public Utility in Ireland.
52. An Act to explain the Acts for preventing the Destruction of the Breed of Salmon and Fish of the Salmon Kind.
53. An Act to empower the Commissioners of Her Majesty's Woods to make certain Alterations and Improvements in the Approaches to the Castle and Town of Windsor.
54. An Act for incorporating the Commissioners of the Caledonian Canal, and for vesting the Crinan Canal in the said Commissioners.
55. An Act for consolidating the Offices of Paymasters of Exchequer Bills and Paymaster of Civil Services with the Office of Paymaster General, and for making other Provisions in regard to the consolidated Offices.
56. An Act to repeal so much of an Act of the Third and Fourth Years of Her present Majesty, to re-unite the Province of Upper and Lower Canada, and for the Government of Canada, as relates to the Use of the English Language in Instruments relating to the Legislative Council and Legislative Assembly of the Province of Canada.
57. An Act to enable Her Majesty to exchange the Advowson of the Vicarage of Stoneleigh in the County of Warwick for the Advowsons of the Rectory of Yoxall in the County of Stafford and the Perpetual Curacy of Hunningham in the County of Warwick.
58. An Act to authorize for Ten Years, and to the end of the then next Session of Parliament, the Regulation of the Annuities and Premiums of the Naval Medical Supplemental Fund Society.
59. An Act for the more speedy Trial and Punishment of Juvenile Offenders in Ireland.
60. An Act to alter the Duties payable upon the Importation of Spirits or Strong Waters.
61. An Act to effect an Exchange of Ecclesiastical Patronage between Her Majesty and the Earl of Leicester, and for the Severance and Consolidation of certain Benefices in the Diocese of Norwich, and for other Ecclesiastical Purposes.

62. An Act to appoint additional Commissioners for executing the Acts for granting a Land-Tax and other Rates and Taxes.

63. An Act for promoting the Public Health.

64. An Act to continue until the 1st day of October, 1849, and to the end of the then next Session of Parliament, an Act to amend the Laws relating to Loan Societies.

65. An Act to suspend until the 1st day of October, 1849, the making of Lists and the Ballots and Enrolments for the Militia of the United Kingdom.

66. An Act to continue to the 1st day of October, 1849, and to the end of the then next Session of Parliament, an Act for authorizing the Application of Highway Rates to Turnpike Roads.

67. An Act for further continuing until the 1st day of August, 1849, and to the end of the then next Session of Parliament, certain temporary Provisions concerning Ecclesiastical Jurisdiction in England.

68. An Act for extending to Ireland an Act passed in the last Session of Parliament, intituled "An Act for better securing Trust Funds, and for the Relief of Trustees."

69. An Act to repeal so much of an Act of the Parliament of Ireland of the 23rd and 24th years of King George the 3rd, "for the more effectually punishing such Persons as shall by Violence obstruct the freedom of Corn Markets and the Corn Trade, and who shall be guilty of other Offences therein mentioned, and for making Satisfaction to the Parties injured," as relates to the making of Satisfaction to the Parties injured; and to substitute other Provisions in lieu thereof; and to repeal the Provisions of the Acts which give Remedies against any Hundreds or Baronies in Ireland in respect of Robbery.

70. An Act for dispensing with the Evidence of the Proclamations on Fines levied in the Court of Common Pleas at Westminster.

71. An Act to continue to the 20th day of July, 1853, and to the end of the then next Session of Parliament, Her Majesty's Commission for building new Churches.

72. An Act to amend the Acts relating to the Constabulary Force in Ireland, and to amend the Provisions for the Payment of Special Constables.

73. An Act to continue until the 31st day of July, 1849, and to the end of the then Session of Parliament, certain Acts for regulating Turnpike Roads in Ireland.

74. An Act to authorize the Lords of Council and Session to regulate the Rates or Dues of Registration to be charged by the Keepers of the Registers of Sasines, Reversions, &c., in Scotland.

75. An Act to defray until the 1st day of August, 1849, the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons,

Surgeons' Mates, and Serjeant Majors of the Militia; and to authorize the employment of the Non-commissioned Officers.

76. An Act to enable Archbishops and Bishops and other Persons in Ireland to compromise Suits touching the Rights of Patronage as to Ecclesiastical Benefices, in certain Cases.

77. An Act to authorize the Application of Part of the unclaimed Money in the Court for the Relief of Insolvent Debtors in enlarging the Court House of the said Court.

78. An Act for the further Amendment of the Administration of the Criminal Law.

79. An Act to facilitate and simplify Procedure in the Court of Judiciary in Scotland.

80. An Act to empower Lessees of Tithe Rent-charge in Ireland to deduct a Proportion of Poor Rate Poundage from Rent; and also to empower the Ecclesiastical Commissioners in Ireland to allow Sums paid for Poor Rate or County Cess, or Poundage deducted from Ecclesiastical Persons on account of Poor Rate, among the Deductions from the Valuation of Ecclesiastical Property directed to be made under an Act of the 3rd and 4th Years of His late Majesty, for the Purpose of a certain Tax thereby imposed upon such Property in Ireland.

81. An Act for the further Regulation of Steam Navigation, and for limiting in certain Cases the Number of Passengers to be conveyed in Steam Vessels.

82. An Act to amend the Law for the Formation of Districts for the Education of Infant Poor.

83. An Act to confirm the Awards of Assessionable Manors Commissioners, and for other Purposes relating to the Duchies of Cornwall and Lancaster.

84. An Act to amend the Acts for rendering effective the Service of the Chelsea and Greenwich Out-Pensioners, and to extend them to the Pensioners of the East India Company.

85. An Act to continue to the 1st day of October, 1849, and to the end of the then next Session of Parliament, the exemption of Inhabitants from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor.

86. An Act to empower Commissioners of the Court of Bankruptcy to order the Release of Bankrupts from Prison in certain Cases.

87. An Act to extend the Provisions of an Act passed in the 1st year of his late Majesty King William the Fourth, intituled "An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate."

88. An Act for further regulating the Money Order Department of the Post Office.

89. An Act to continue for Two Years, and to the end of the then next Session of Parliament, and to amend an Act of the 2nd and 3rd years of her present Majesty, intituled "An Act to extend and render more effectual for Five Years an Act passed in the 4th year of his late Majesty George the 4th, to amend an Act passed

- in the 50th year of his Majesty George the 3rd, for preventing the administering and taking unlawful Oaths in Ireland."
90. An Act to regulate the Times of Payment of Rates and Taxes by Parliamentary Electors.
91. An Act to make Provision for the Payment of Parish Debts, the Audit of Parochial and Union Accounts, and the Allowance of certain charges therein.
92. An Act for the Protection and Improvement of the Salmon, Trout, and other Inland Fisheries of Ireland.
93. An Act to confirm the Incorporation of certain Boroughs.
94. An Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common Law Side of that Court, and the Enrolment Office of the said Court.
95. An Act to carry into effect the Arrangements of the Ecclesiastical Commissioners for England for making better Provision for the Cure of Souls in the Parish of Wolverhampton in the County of Stafford and Diocese of Lichfield.
96. An Act to continue certain Turnpike Acts for limited Periods.
97. An Act to repeal the Duties of Customs upon the Importation of Sugar, and to impose new Duties in lieu thereof.
98. An Act to amend the Law for the Trial of Election Petitions.
99. An Act to further extend the Provisions of the Act for the Inclosure and Improvement of Commons.
100. An Act to permit the Distillation of Spirits from Sugar, Molasses, and Treacle in the United Kingdom.
101. An Act to provide for the expenses of erecting and maintaining Lock-up Houses on the Borders of Counties.
102. An Act to enlarge the Powers of an Act empowering the Commissioners of her Majesty's Woods to form a Royal Park in Battersea Fields; to facilitate the raising of Monies authorized to be raised by the said Commissioners for Metropolitan Improvements; and to regulate and simplify the Mode of keeping the Accounts of the Commissioners of her Majesty's Woods.
103. An Act to authorize the Application of a Sum of Money out of the forfeited and unclaimed Army Prize Fund in purchasing the Site of the Royal Military Asylum, and in improving such Asylum.
104. An Act for amending the Act for regulating the Prison at Millbank.
105. An Act to prohibit the Importation of Sheep, Cattle, or other Animals, for the purpose of preventing the Introduction of contagious or infectious Disorders.
106. An Act to amend an Act of the 10th year of her present Majesty, for rendering valid certain Proceedings for the Relief of Distress in Ireland by Employment of the Labouring Poor, and to indemnify those who have acted in such Proceedings.
107. An Act to prevent, until the 1st day of September, 1850, and to the end of the then Session of Parliament, the spreading of contagious or infectious Disorders among Sheep, Cattle, or other Animals.
108. An Act for enabling her Majesty to establish and maintain Diplomatic Relations with the Sovereign of the Roman States.
109. An Act to authorize the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales.
110. An Act to alter the Provisions relating to the Charges for the Relief of the Poor in Unions.
111. An Act to amend an Act of the 10th year of her present Majesty, for amending the Laws relating to the Removal of the Poor.
112. An Act to consolidate, and continue in force for Two Years and to the end of the then next Session of Parliament, the Metropolitan Commissions of Sewers.
113. An Act for the further Amendment of the Acts relating to the Dublin Police.
114. An Act to prevent District Auditors from taking Proceedings in certain Cases.
115. An Act to vest in her Majesty the Property of the Irish Reproductive Loan Fund Institution, and to dissolve the said Institution.
116. An Act for carrying into effect the Treaty between her Majesty and the Republic of the Equator for the Abolition of the Traffic in Slaves.
117. An Act for rendering certain Newspapers published in the Channel Islands and the Isle of Man liable to Postage.
118. An Act to explain and amend the Law as to the Licence required for the letting of Post Horses to Hire in Ireland, and the Law respecting Proceedings for Duties and Penalties under the Post Horse, Stage, and Hackney Carriage Acts in the United Kingdom.
119. An Act to simplify the Forms of Certificates under the Act authorizing the advance of Money for the Improvement of Land by Drainage in Great Britain.
120. An Act to facilitate the Transfer of Landed Property in Ireland.
121. An Act to alter the Laws and Regulations of Excise respecting the Survey of Dealers in and Retailers of Spirits, and respecting the Sale and Removal of Spirits by Permit from the Stock of such Traders; and respecting the Distribution of Penalties and Forfeitures recovered under the Laws of Excise.
122. An Act to amend the Laws respecting the Warehousing of British Spirits in England, Scotland, and Ireland respectively, and to permit Spirits made from Malt only, and Spirits made from Malt and other Grain, and Rectified Spirits, to be exported on Drawback from any Part of the United Kingdom; and respecting certain Spirit Mixtures, and the Removal of Goods subject to Excise Regulations from Customs Warehouse.
123. An Act to renew and amend an Act of the Tenth Year of Her present Majesty, for the more speedy Removal of certain Nuisances.

and the Prevention of contagious and epidemic Diseases.

124. An Act to amend an Act of the last Session, for varying the Priorities of the Charges made on "The London Bridge Approaches Fund," and to facilitate the Completion of certain Improvements in the City of Westminster.

125. An Act for raising the Sum of Two Millions by Exchequer Bills, or by the Creation of Annuities, for the Service of the Year 1848.

126. An Act to apply a Sum out of the Consolidated Fund, and certain other Sums, to the Service of the Year 1848; and to appropriate the Supplies granted in this Session of Parliament.

127. An Act to reduce the Duties on Copper and Lead.

128. An Act for carrying into effect the Agreement between Her Majesty and the Imaun of Muscat for the more effectual Suppression of the Slave Trade.

129. An Act for amending an Act passed in the 9th & 10th years of Her present Majesty for making preliminary Inquiries in certain Cases of Applications for Local Acts.

130. An Act for guaranteeing the Interest on such Loans, not exceeding 500,000*l.*, as may be raised by the British Colonies on the Continent of South America, in the West Indies and the Mauritius, for certain Purposes.

131. An Act to amend, and continue until the 1st day of November, 1849, and to the end of the then next Session of Parliament, an Act to make Provision for the Treatment of poor Persons afflicted with fever in Ireland.

132. An Act for the Appointment of additional Taxing Masters for the High Court of Chancery in Ireland, and to regulate the Appointment of the Principal Assistants to the Masters in the Superior Courts of Law in Ireland.

133. An Act to amend the Laws relating to Savings Banks in Ireland.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1848.

Queen's Bench.

Clerks' Names and Residence.

Ambler, James Pearson, 1, Amwell-street, and Halifax
 Arkcoll, Francis William, 6, Strand; and Sydenham
 Ash, Thomas, 11, Connaught-terrace, Hyde-park; and Edgarley
 Andrews, Stephen Wilson, 28, Albert-street, Regent's-park; and Boston
 Armfield, George Mauder, 23, The Terrace, Kennington-common; and Birmingham
 Andrew, John, 4, Park-terrace, Battersea
 Allen, Charles, 78, Hamilton-terrace, St. John's-wood
 Boothroyd, Edward Hyde, 45, Essex-street, Strand; Edmund-place, Stockport; and Shaw-heath-house
 Burgon, William, 14, Goulden-terrace, Islington
 Bishop, Paul John, 21, Howland-street, Fitzroy-squares
 Banfield, John, 8, Percy-circus, Pentonville; and Penzance
 Baxter, Stafford Squire, 18, Abingdon-street; and Atherstone
 Batley, Joseph, jun., Huddersfield
 Berry, John Johnson, 75, Oxford-terrace, and Crew Blain, Thomas Goad, 50, Upper Albany-street; and Liverpool
 Blake, Frederick John, 3, Grove-place, The Grove, Camberwell
 Brown, William, 63, Charrington-street, Oakley-square; Pancras-road; and Warwick
 Bulleid, John G. Laurence, 25, White-lion-street, Islington; and Glastonbury
 Barrow, Joseph, 1, Regent's-place, East; and Well's-street, Gray's-inn-road
 Brown, James Weston, 13, Hemingford-cottages, Islington; Plymouth; and Chardleigh-green
 Burrell, William Beckett, Wakefield
 Bottrill, George, Lutterworth

To whom Articled, Assigned, &c.

H. Robson, Halifax
 D. H. Stone, Poultry
 S. Holman, Glastonbury
 F. T. White, Boston
 R. H. Tarleton, Birmingham
 W. Martin Wilkinson, Lincoln's-inn-fields
 Wm. Kinsey, Bloomsbury-square
 John Boothroyd, Stockport
 W. P. Milner, Sheffield
 John Bishop, New Bridge-street
 Richard Millett, Penzance
 S. S. Baxter, Atherstone
 T. Brook, Huddersfield
 J. W. Ward, Newcastle-under-Lyme
 W. G. Bateson, Liverpool
 J. Carlon, Palace-chambers.
 G. E. Baker, Warwick
 S. Holman, Glastonbury
 E. Ward, Prescot; P. Simpson, Bedford-row
 A. Rooker, Plymouth
 John Scholey, Wakefield
 Jt. Wm. Holt, Lutterworth

- Briandley, Joseph** Pargeter, 5, South-parade, Brompton; and Birmingham **Hy. M. Griffiths, Birmingham**
Broadhurst, Alfred, Stanhope-street, Camden-town **Charles Pearson, Belmont**
Boyton, Francis James, 27A, Clayland's-road, Kennington **Geo. Penfold, Croydon**
Bradbury, Augustus, Streatham **B. Hardwick, Weaver's-hall**
Blake, Alfred Godby, 79, Blackfriars-road; and Croydon **J. J. Blake, Blackfriars-road**
Blaon, William Septimus, 15, Regent-street; and Welfield-place, Liverpool **Wm. T. Keightley, Liverpool**
Baylis, George John, 10, Thistle-grove, Brompton; and Gravesend **W. A. Coombe, Gravesend**
Bury, John, 2, Lyndhurst-square, Camberwell **J. Lawrence, St. Ives**
Burland, Thomas Blanchard, Beverley **John Myers, Beverley**
Burrell, Edward Montague, 1, White-hart-court, Lombard-street **S. A. Beck, Ironmonger's-hall**
Bonsall, Isaac, 2, Charles-street, Northampton-square; and Machynlleth **J. G. W. Bonsall, Machynlleth**
Crossland, Robert, Bury **James Winder, Bolton-le-Moors**
Coe, William, jun., Clapham **T. M. Cattlin, Ely-place**
Corke, C. William, articulated by the name of Chas. Wm. Cork, 11, Bedford-row, Bristol; 5, Gough-street, North, Gray's-inn-road **H. S. Washbrough, Bristol**
Campion, Robert Taylor, 15, New Ormond-street; and Exeter **J. Pitts, Exeter**
Cattell, Christopher William, 1, Brunswick-row, Queen-square **J. O. Hall, Brunswick-row**
Collard, John Donne, 57, High-street, Poplar; and Canterbury **Edward Barron, Bloomsbury-square; W. H. Cullen, Poplar**
Codd, Charles Robinson, 12, Wharton-street; and Scarborough **John Cook, Scarborough**
Chubb, Thomas Henry, Malmesbury **Hy. Richards, Croydon; Thomas Chubb, Malmesbury**
Cobb, Henry William, 5, Great Ormond-street; and Salisbury **James Cobb, Salisbury**
Chippindale, Edward, 130, Bunhill-row **William Hine, Charterhouse-square**
Cookson, John Fowler, 3, Buckingham-place, Picnic; Preston; Henrietta-street; and Manchester-street **William Dickson, Preston**
Collins, Charles Atkins, 34, Percy-street, Bedford-square; Bath; and Southampton-row **Robert Cook, Bath**
Collins, John, Newton-road, Bayswater **James B. May, Queen-square**
Calthorp, Thomas Deunie, Morden College, Blackheath **J. S. Rymer, Whitehall-place**
Condy, George Thomas, 61, Bread-street, City **H. W. Bull, Ely-place; J. W. Flower, Bread-street**
Druce, George Frederick, 27, Oxford-terrace, Clapham-road; Oxford; and Thanet-place **John Walsh, Oxford**
D'Aeth, George W. Hughes, 2, Mitre-court, Fleet-street **Samuel Waller, Cuckfield; Henry Hughes, Clement's-inn**
Deighton, Richard Scott, 2, Park-place, Holloway **Thomas Kirk, Symond's-inn**
Dunn, Henry Bidwell, 2, Pembroke-terrace, Kensington **Wm. Drake, East Dereham; J. Turnley, Walbrook-house, Walbrook**
Durant, John Frederick, 40, Baker-street, Lloyd-square; Upper North-place **J. Durant, Poole**
Davies, William, 15, Parkfield-street, Islington; Haverfordwest; and St. Andrew's Hill, Doctor's Commons **Wm. Rees, Haverfordwest**
Darbishire, Robert Dukinfield, B. A., 38, Gloucester Crescent; and Manchester **S. D. Darbishire, Manchester**
Eagles, Ezra, jun., 72, Judd-street, Brunswick-square **E. Eagles, Bedford**
Evans, Richard, jun., 10, College-place; Wolverhampton; Penderford-hall; Featherstone-buildings; and Wakefield-street **G. Robinson, Wolverhampton**
Evans, Worthington, Stoke Newington **M. C. Jones, Liverpool**
Fellows, Harvey Winson, King's-bench-walk; and Rickmansworth **T. Fellows, Rickmansworth**
Forster, Robert Norman, 5, Redman's-row, Mile-end-road **L. Jacobs, Crosby-square**
Freestone, Anthony Sexton, 45, Gower-place **Edward Freestone, Norwich; R. Gamlen, Gray's-inn-square**
Forwood, T. Weech Jones, Tiverton **T. L. T. Rendell, Tiverton**
Fisher, R. Blake Horman, 16, James-street, Buckingham-gate **Samuel Fisher, Merchant Tailors'-hall**

- Godfrey, John, 88, Albany-street; and Liverpool J. Stiles, Shepton Mallet; J. B. Cracknell, Paulton; E. Govett, Upper North-place; P. F. Curry, Liverpool
- Gardner, Sladden, 33, Rennington-street, City-road; and Ashford R. Furley, Ashford
- Grain, Frederick, 5, New Millman-street; and Great Shelford G. J. Twiss, Cambridge
- Gregson, R. Shuttleworth, East Dulwich; Peckham Rye; and Staplehurst G. J. Ottaway, Staplehurst; J. Gregson, Angel-court
- Guy, Augustus George, 18, Everett-street, Russell-square; and Gainsborough J. Guy, Gainsborough
- Gillard, Peter, 12, Windsor-place, City-road; and Kingsbridge W. C. Haley, Kingsbridge
- Goodall, Frederick Bates, 14, Cardington-street, Nottingham; and Arundel-street J. Smith, Nottingham
- Gamon, Charles, 53, Acton-street, Gray's-inn-road; and Pendleton Alexander Thomson, Manchester; Richard Claye, Manchester
- Galland, Robert, Kingston-upon-Hull J. Earnshaw, Kingston-upon-Hull
- Huxham, John Brown Cove, 12, Tavistock-place; and Wharton-street, Lloyd-square J. Huxham, Bishopsteignton; J. Coverdale, Bedford-row
- Hunt, William, 53, Alfred-street, Islington D. J. Lee, Bedford-row
- Hammonds, Peregrine, 5, Gough-street, North, Gray's-inn-road; Bristol; and Lincoln's Inn W. Tanner, jun., Bristol
- Hindle, Henry, 33, Gower-place; and Liverpool J. Hindle, Liverpool; E. F. Burton, Chancery-lane
- Hudson, Benjamin, Sheffield Henry Vickers, Sheffield
- Hill, Walter, Leamington Priors R. Poole, Southam
- Hughes, George Martin, 6, Strahan-terrace, Islington; and Maidstone F. Scudamore, Maidstone
- Hanner, Thomas, 1, Wimpole-street, Cavendish-square; and Shrewsbury W. W. How, Shrewsbury; R. N. Bennett, Lincoln's-inn
- Hancock, Theodore, 13, Canonbury-terrace, Islington; and Wedmore J. Bailey, Wedmore
- Hedger, Edwin, South-street, West-square W. Robinson, Charter-house-square
- Harward, Arthur, 13, Park-terrace, Liverpool-road; and Wirksworth J. C. Newbold, Matlock
- Hall, Lawrence Robert, 8, Marlborough-place, St. John's-wood; and Bramcote J. Fox, Nottingham
- Hunter, Rawdon, jun., 11, George-street, Euston-square; Munday-street; and Hoxton-square C. Cook, New-inn; R. B. Sanders, New-inn
- Harris, James Charles, Warwick Thomas Heath, Warwick.
- Hook, John, 29, Theberton-street, Islington; and Liverpool Thomas Morecroft, Liverpool
- Howard, Frederick William, 6, Craven-street, Strand; and Doncaster John Howard, Doncaster; R. Baxter, Doncaster and Westminster
- Henderson, Joseph Quarine, Dalston-green Edward J. Murray, Whitehall-place
- Humphreys, George, Bristol James John Leman, Bristol
- Hicks, Christopher, jun., Shrewsbury Henry Hicks, Shrewsbury
- Harrow, Robert, 22, Bartholomew-close; Winchester; and Alton J. Warner, Winchester
- Hunt, William, Nottingham W. Hurst, Nottingham
- Hayward, Charles Edwards, 30, Euston-place, Bernard-street; and Browfort Messrs. Todd and Waters, Winchester; Messrs. Williams and McLeod, Temple
- Jones, John, Liverpool An Attorney of the Court of Common Pleas at Lancaster
- Johnson, Marcus Henry, Highgate-hill J. M. Browne, Hind-street; R. E. Johnson, Great Winchester-street
- Jaques, William, Halifax John Jacques, 8, Ely-place; W. F. Holroyd, Halifax
- Jenkyn, Osborn, 15, Queen-street, Brompton; and Clarendon-square J. Jenkyn, John-street, Adelphi
- Johnston, Thomas, 65, Swinton-street, Gray's-inn-road; and Penrith L. Harrison, Penrith
- Jennings, Hugh, Wakefield Samuel F. Harrison, Wakefield
- Jones, Charles Edward, 34, Alfred-place, West Brompton; and Camden-road-villas John A. Young, St. Mildred's-court
- Jackson, John, 37, John-street, Bedford-row; Tadcaster; and Pleasant-row E. Blaydes Thomson, Tadcaster
- Kendall, John, 14, Belgrave-street, New-road John Daw, Exeter
- King, Alfred Hassall, 10, Lyon's Inn A. King, Paper-buildings, Temple; W. B. Russell, Braunston; and Paper-buildings
- Luard, William Charles, 7, Elizabeth-street, Eaton-square John Marmaduke Teesdale, Fenchurch-street

[The remainder of this List will be given in our next Number.]

LEGAL OBITUARY.

May 2, 1848.—Henry Morton, Solicitor, of Uxbridge, aged 55. Admitted on the Roll, M. T., 1815.

May 11.—John Ilderton Burn, formerly a Solicitor in the City and in Gray's Inn. He was the author of a Practical Treatise on Marine Insurance, 1801, another on Stock-Jobbing, 1803, and a Digested Index to Modern Reports, 1804, and other publications. Admitted on the Roll, H. T., 1796.

May 15.—George Nettleship, Solicitor, late of Watford, Herts, aged 36. Admitted on the Roll, E. T., 1833.

May 25.—Thomas Bowman, Solicitor, aged 74. He was formerly a partner with Mr. Blunt, the solicitor of the Mint.

May 30.—John Wm. Bittleston, of the Middle Temple, Barrister-at-Law, aged 27. Called to the Bar, 29th Jan. 1847.

May 30.—William Hancock, Solicitor, of Bermondsey, aged 74. Admitted on the Roll, T. T., 1814.

June 1.—At Tottenham, aged 72, William Robinson, LL.D., Barrister-at-Law, of the Middle Temple. He was a most useful and excellent Magistrate and Deputy Lieutenant; as a lawyer he published, 1st, Parochial Law, 2 vols. 8vo., 1827; 2ndly, "Formularies or Magistrate's Assistant," 2 vols. 8vo., 1837; 3rdly, "Analysis of the Criminal Statutes, 12mo., 1827; 4thly, "Introduction of a Justice to the Quarter Sessions," 12mo., 1836; 5thly, "Breviary of the Poor Law," 12mo., 1837; 6thly, The Magistrate's Pocket-Book, 4th edition by Mr. Archbold, 12mo., 1842. The learned doctor also published the Local His-

ories of 1st, Stoke Newington; 2ndly, Tottenham; 3rdly, Edmonton; 4thly, Enfield; and 5thly, Hackney.

June 1.—Sir John de Veuille, Bailiff or Chief Judge of Jersey, aged 49.

June 4.—Louis Peter Petit, M. A., of Trinity College, Dublin, of Lincoln's Inn, Barrister-at-Law, aged 32. Called to the Bar, 4th May, 1843.

June 6.—Robert Baldwin, of the Temple, Barrister-at-Law, aged 39. Called to the Bar, 20th Nov. 1840.

June 24.—Edward Burbidge, Solicitor, 88, Hatton Garden, aged 38. Admitted on the Roll, T. T., 1835.

July 10.—James William Gudge, of the Inner Temple, Barrister-at-Law. Called to the Bar, 16th Nov. 1832.

July 29.—Charles Swann, of the Inner Temple, Barrister-at-Law. Called to the Bar, 13th May, 1830. He had the advantage of seeing a very extensive practice in the office of Messrs. Sweet & Co., Basinghall Street.

Aug. 4.—Sir Giffin Wilson, late Master in Chancery, aged 83.

Aug. 15.—John Corser, Solicitor, of Wolverhampton, aged 76. Admitted on the Roll, H. T., 1794.

Aug. 17.—John Windus, Solicitor, of Epping, aged 53. Admitted on the Roll, H. T., 1823.

Sept. 4.—Robert Spiller Wadeson, of Austin Friars, Solicitor. Admitted T. T., 1821.

Sept. 6.—John Watson, of Worship Street, Finsbury, Solicitor. Admitted E. T., 1829.

Sept. 13.—John White, of Barge Yard Chambers, Bucklersbury, Solicitor. Admitted T. T., 1815.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls' Court.

Hitchcock v. M'Vicars. June 8, and Aug. 9, 1848.

WITHDRAWING REPLICATION.

After witnesses had been examined, the Court refused to allow the replication to be withdrawn against one of the defendants, for the purpose of examining him generally in the cause.

THIS was a motion for leave to file a replication against certain of the defendants who had recently come within the jurisdiction, and to withdraw it against a Mr. Young, another of the defendants, for the purpose of examining him as a witness. It appeared that witnesses had been examined in the cause, at Sidney, by whose evidence it was originally supposed that the whole case could be made out; and it was stated that their depositions were not known to the plaintiff, but his solicitor at Sydney had

questioned them before their examination, and declared that their evidence was favourable to the plaintiff's case, so far as it went. There was, however, one important fact, which it now appeared that nobody could prove but the defendant Young, and upon this point it was, that the plaintiff especially wished to examine him, though he asked for leave to examine him generally.

Mr. Prior, for the motion, said, that the plaintiff asked only for what, before the Orders of May, 1845, he could have been allowed to do as of course, merely to withdraw his replication against Young, and set down the cause on bill and answer against him.

Mr. Turner, Mr. Roupell, and Mr. Collins, in opposition to the motion, contended that the application should have been made before the witnesses were examined. To allow Young now to be examined would be a great hardship on the other defendants, who might have abstained from examining witnesses at Sidney,

because they knew that the case could not be proved by the witnesses who were then examined on the other side.

Lord Langdale said, that there was a great difference between an application to withdraw the replication against a defendant in order to examine him as to some particular fact and nothing else; and the present application, which sought for leave to examine Mr. Young generally, and against all the other defendants who might wish to examine witnesses at Sidney in respect to the facts on which Young was to be examined. Ultimately, his lordship refused to make any order as to the withdrawal of the replication, upon the ground that it might probably lead to an application to suppress the depositions; but allowed a new replication to be filed against the defendants who had recently come within the jurisdiction.

Vice-Chancellor of England.

Burley v. Evelyn. July 1, 1848.

CONSTRUCTION OF WILL.—DEFAULT OF ISSUE MALE.

£5,000 was given on trust to pay the interest to testator's nephew, J. E., for life, and after his death, to the first son of J. E. for life, and after his death, to pay the principal to the child or children of such first son equally, and for default of such issue, to pay the interest to the second, third, and all the other sons of J. E. successively as they should be in priority of birth and seniority of age, and to their respective issue in the same manner as to the issue of the first son of J. E., "and for default of issue male" of J. E. remainder over: Held, that the words "default of issue male" meant a general failure of issue male of J. E., and not a failure of sons, and limitations over void for remoteness.

GENERAL WM. EVELYN, by his will, dated 30th Nov. 1781, gave to his trustees the sum of 5,000*l.*, "upon trust to place the same out at interest on government or land security, in the names of Mr. M. Godschall and Mr. W. Strode, their executors or administrators, and from time to time call in and replace the same in new securities, and pay the interest, dividends and proceeds thereof, as the same should be received, to his nephew, John Evelyn, son of his late nephew, Charles Evelyn, for the term of his natural life, and after his decease to pay such interest, dividends, and proceeds of the said principal sum of 5,000*l.* to the first son of the said John Evelyn, lawfully to be begotten, for life, and after his decease to pay the principal sum of 5,000*l.* to the child or children of such first son, lawfully begotten, equally between them, if more than one, and for default of such issue, to pay such interest, dividends, or proceeds of the said sum of 5,000*l.* to the second, third, and all and every other son and sons of the said John Evelyn, lawfully to be begotten, severally, successively, and in order one after another, as they should be in priority

of birth and seniority of age, and to their respective issue lawfully begotten, in the same manner as to the issue of the first son of the said John Evelyn, and for default of issue male of the said John Evelyn, upon trust to pay the interest, dividends, and proceeds of the said principal sum of 5,000*l.* to my nephew Charles Evelyn, second son of my said nephew Charles, for his natural life, with remainder to Hugh Evelyn, in like manner, and for default of such issue, upon trust to pay the said principal sum of 5,000*l.* to such persons as under that his will should be entitled to the residue of his estate." John Evelyn died in 1833, a lunatic and unmarried; and the bill was filed by the heir-at-law, seeking to set aside for remoteness the limitations in the will subsequent to the gift to John Evelyn and his issue.

Mr. Bethell and Mr. Goldsmid, for the heir-at-law.

Mr. Temple and Mr. Smythe, contra.

The cases cited during the argument were,—*Leahe v. Robinson*, 2 Mer. 365; *Keene v. Dickson*, 3 Doug. 313; *Tarback v. Tarback*, 2 Jarm. on Wills, 375; *Goymour v. Pigge*, 8 Jur. 527; *Ellicombe v. Gompertz*, 3 Myl. & Cr. 127; *Murray v. Addenbrook*, 4 Russ. 407; and *Stanley v. Leigh*, 2 P. Wms. 686.

The Vice-Chancellor, after reading the words of the will, said, it had been argued that he must construe the words "and for default of issue male" to mean in case John should never have a son, but it was plain that that was not the meaning of the testator,—he meant to describe a failure of some portion of the antecedent gift so as to let in some by remainder; and he thought the fair construction of the testator's meaning was, that if he had a son, that son, or if he died, then that the children of such son should take, but there was no description by the words of one settled fact of there being no son. The cases cited turned upon whether "default of issue" should defeat the prior estates given, but he did not imagine that any one of those cases would describe a total failure at any one time of the sons of John. He thought the testator had described the failure of the remainders as remainders, but had not substituted a new set of limitations, and the limitations over being too remote were therefore void, and the heir would take, but the character of a chattel having been impressed upon it, the heir would take the undisposed of part as a chattel.

Harris v. Fergusson. July 21, 1848.

STOCK.—JOINT TENANCY.

A sum of stock standing in the joint names of a brother and sister, but contributed by them in unequal shares, constitutes, without more, a joint tenancy, and the whole belongs to the survivor.

In this case it appeared, that at the death of a testator two sums of stock, one of 6,261*l.* consols, the other of 4,422*l.* 6*s.* 8*d.* 3*d.* per cent.—stood in the joint names of the testator and his

sister, Catharine Harris; the former sum was purchased by them in equal shares, but the latter not, the sister contributing 4,003*l.* 19*s.* 11*d.*, and the testator 428*l.* 16*s.* 9*d.* The sister survived the testator, and the question was, whether she was entitled to the whole of the fund.

Mr. *Hore* for the representatives of the testator contended, that where stock stood in the joint names of two persons, and there being no evidence of any trust being attached to it, the presumption at law was, that it constituted a tenancy in common.

Mr. *L. Russell* and Mr. *J. Stuart, jun.*, contra. That case did not apply, the stock being there purchased by one person—here the intention clearly was to form a joint tenancy in the fund.

The Vice-Chancellor said, he was rather of opinion that there could not be a question of apportionment of the fund, but on the contrary, that the parties contributed the sums for the purpose of making a joint tenancy.

Vice-Chancellor Knight Bruce.

In re Bagshawe and others. Friday, Feb. 11th, 1848.

TAXATION OF BILL OF COSTS.—STAT. 6 & 7 VICT. c. 73.

A. was the solicitor employed by a railway company to obtain their act: he employed B., another solicitor, to collect evidence. In Nov., 1846, A. delivered his bill of costs, not including B.'s charges. The company refused to consider the bill till these charges were included. In Dec., 1847, A. brought an action for his costs, and the company, in January following, presented a petition for taxation. The Court held, that the petitioners, under the circumstances, were entitled to have the bill taxed, though a twelvemonth had elapsed from its delivery.

THE petitioners in this case were the Huddersfield and Manchester Railway and Canal Company, and they prayed that it might be referred to the Taxing Master to tax and settle the bill of Messrs. Bagshawe, Stevenson, and Lycett, and that the proceedings in the action commenced against the petitioners, for the recovery of the amount of the bill and all other proceedings at law against the petitioners on account of the same, might be stayed until the said Master should have made his report. Messrs. Bagshawe and Co. were solicitors at Manchester, and in 1846 were employed by the company in an application to parliament for an act to authorize the formation of a branch railway. Shortly before February, 1846, it was represented by them to the company, that it would be necessary to employ a solicitor resident in the immediate neighbourhood of the tract of country proposed to be traversed by the branch railway, but the petitioners refused to accede to the respondent's request, as they had determined that a single solicitor or firm of solicitors should

be responsible to them for the entire management and conduct of the business. The respondent, Mr. John Stevenson, then in a letter to the secretary of the petitioners stated, that he had selected Mr. Jacomb, of Huddersfield, as his agent to transact the business as to the said branch railway. The petitioners acquiesced in the selection and employment of Mr. Jacomb, but they did not recognize him as their agent, nor did any communications take place between him and the board of directors or their secretary. In Sept. 1846, the respondents ceased to be the solicitors for the petitioners, and in the following November they delivered to the petitioners their bill of costs and disbursements, but such bill did not include any charge or item relating to the collecting of evidence or other local business, but the account of disbursements contained items of charge for monies paid to Mr. Jacomb for expenses of witnesses. The petitioners considering the bill to be imperfect, deferred the consideration of it until Mr. Jacomb's bill should have been sent in, and the secretary, by the direction of the board of directors so stated in two letters dated respectively the 12th of March and the 13th of July, 1847, addressed to the said respondents. The total amount of the bill, exclusive of the general account for disbursements, was 9,418*l.* 2*s.* 11*d.* The respondents commenced an action against the petitioners for the amount of their claim, and the petition was therefore presented, stating that certain items were unreasonable and improper.

Mr. *Malins* and Mr. *Denison*, for the petition, submitted to bring into Court the amount of the balance claimed within three weeks.

Mr. *Bacon* and Mr. *Freeling*, for the respondents, contended, that no special circumstances were shown to call upon the Court to direct the taxation after a twelvemonth had elapsed since the delivery of the bill. They referred to the 21st section of the 6 & 7 Vict. c. 73; *Re Wilton*, 22 Law Journ. 17; *Re Whicher*, 13 Mees. & Wels. 549; *Re Thompson*, 8 Beav. 237; and *Re Currie*, 10 Jurist, 976.

His Honour said:—Upon the question whether the petitioners are debtors to Mr. Jacomb,—whether he is indebted to them,—whether there was any contract of any kind between him and them, it is not necessary for me to give any opinion. However those questions, or any one of them, ought to be answered, it appears to me that the dispute and correspondence relating to him between the petitioners and the respondents amount to a sufficient apology for the lateness of the time at which the petition is presented, when it is considered that the respondent's action was not commenced before December last, the petition having been presented in January of this year; and therefore there are in this respect special circumstances which render it fit to send the bill to be taxed, notwithstanding the 12 calendar months have elapsed from the original delivery of the bill in Nov. 1846. The petitioners having submitted to bring into

Court the amount of the balance claimed in three weeks, the judgment must be done away with as soon as the money is brought in. Reserve the costs.

Queen's Bench.

(Before the Four Judges.)

Hall v. Bainbridge and Emery. Trinity Term, 1848.

ADMISSIONS.—DELIVERY OF DEED.—ASSUMPSIT.—DEBT.

An instrument was stated, in certain admissions on which a cause was tried, to have been "signed, sealed, and executed, as it purports to be."

Held, that this admission must be construed to include delivery so as to render the instrument valid as a deed.

Another instrument, not referring to the former, but further carrying out the stipulations in it, was signed as a simple agreement. It did not contain all the stipulations which created the plaintiff's title and the defendant's liability.

Held, that the action must be taken to have been brought on the first deed, and that consequently assumpsit was not maintainable.

THIS was an action of assumpsit to recover a sum of 2,700*l.*, claimed by the plaintiff under the following circumstances:—The plaintiff was the inventor of certain improvements in the machinery of marine steam-engines. The defendants were two of the directors of the British and North American Steam Navigation Company, and it was alleged that they had entered into an agreement with the plaintiff for liberty to use his invention. It appeared that an agreement to that effect had been signed on the 26th of Nov., 1836, by a person named Solly, who was one of the directors of the British and North American Steam Navigation Company, but who had not received any special authority to make this agreement. The document thus signed by him was in the form of a deed, and was under seal. It included most of the plaintiff's inventions, but not all; and two days afterwards another agreement, which however was not under seal, was executed by the same parties, in which the plaintiff's other inventions were included. By these agreements the plaintiff granted the licence to use his patents, and the defendants, in consideration of such licence, undertook to pay him a sum of 2,000*l.*, and likewise 5*l.* per horse power for each and every such power "in every engine which should then be, or thereafter might be made, constructed, or manufactured, and used on board of any other ship thereafter to be built or purchased by the company," and in which during the continuance of the plaintiff's patent any of his principles might be adopted. The money was to be paid "on the signing of, or entering into the contract for the manufacturing and pur-

chasing such engine." The defendants built "the British Queen," and put on board of it engines constructed upon the principle of the plaintiff's inventions. They afterwards built the "President," and entered into a contract for engines made according to the plaintiff's patent, to be put on board that vessel, but changed their contract, and did not in the engines put on board that vessel employ the plaintiff's inventions. The question intended to be raised was, whether the agreements bound the defendants, not only to pay the plaintiff so much per horse power for every engine, when they actually used the plaintiff's inventions in their engines, but also when they only signed a contract for that purpose, though such contract was afterwards rescinded, and the plaintiff's inventions were not employed. The plaintiff claimed the payment in all cases whatever, contending that the purchase of the right to use his inventions entitled him to compensation on the signing of the contract, whether that right was exercised or not. On the trial of the cause the plaintiff had a verdict. The defendants afterwards moved in arrest of judgment, on the ground that this was an action in the form of assumpsit, whereas the right to sue, if it existed at all, was founded on a deed, and that the action ought therefore to have been in debt. The questions raised for the consideration of the Court were, 1st, whether, supposing the agreement to be valid in itself, and lawfully executed by an authorized person, the terms of that agreement rendered the defendants liable to the demand; 2ndly, whether an agreement such as that set up by the plaintiff, did not fall within the provisions of the Statute of Frauds, as it was not to be executed within the space of one year, and if so, whether it ought not to be under seal; 3rdly, whether, as there was no statement of the delivery of the deed, but it was merely admitted to have been "signed, sealed, and executed," it could be taken to be a proper deed; and 4thly, whether, supposing it to be an agreement, which need not be entered into under seal, the letters sent to the person who was to make the engines, constituted a contract within the terms of the agreement with the plaintiff, and made the defendants liable to pay him under the terms of the agreement.

Mr. Cowling argued the case for the plaintiff, and Mr. Peacock for the defendant. The Court took time to consider the judgment, which was now delivered by

Mr. Justice Patteson. One of the questions in this case was, whether a written agreement, signed by a person who generally acted as agent for the defendants, but who had not received any direct authority to sign this agreement, could be held binding on the defendants. On this question we think that his authority was sufficient. Mr. Solly was a director of the British and North American Steam Navigation Company, and there had been one contract executed by him on the 26th of Nov. 1836, which was under seal. There was another signed by the plaintiff and Solly on the 29th November, and that was not under seal. By

this the plaintiff granted the right to use the patents in the terms set forth in the declaration, namely, in the erection of any engines for steam vessels which the defendants might furnish, or cause to be furnished to their vessels. The second agreement is founded on the first, and grants the use of the same patents as the first, but varies one of the terms on which the first grant was made. The second agreement cannot be taken *per se*, as the original agreement or the real contract between the parties. It only added other patents to those mentioned in the first agreement, though it did not state that they were to be used on the same terms as those set forth in the first agreement. The action must be brought on the first agreement, and this raises another question, namely, whether the action in its present form, that of assumpsit, is maintainable. If the first agreement is a deed, then the plaintiff cannot found on it this action of assumpsit. But the plaintiff says that, though under seal, it is not a deed, for that nothing is said in the admissions about delivery, which is essential to the constitution of a deed. The case was tried upon admissions as to this point, which admissions were, that it was a document which was "signed, sealed, and executed as it purports to be." The Court is to stand in the place of a jury, and to draw its own inferences of facts. The document was produced in evidence by the plaintiff. If a witness had subsequently been called, and had said that he saw it signed and sealed by Solly, and then the other side produced it so signed and sealed, the jury would have been justified in assuming a formal delivery, and in saying that it was delivered. We think that we must treat the admissions in the same way as that evidence, and consequently that the instrument must be considered as a deed, and that the defendants are therefore on that ground entitled to a verdict. The second question was, whether the contract was made between the plaintiff and Solly so as to give the defendants the right to use the principle of the plaintiff's inventions, and binding them to the use of it and the liability to pay for it. On this question we think the facts (which his lordship fully stated) show that the plaintiff is entitled to a verdict as to this issue. The verdict will therefore be for the plaintiff on the first issue, and for the defendants on the second.

Court of Exchequer.

Jones v. Smith and others. June 13, 1848.

CHANGING VENUE.—MATERIAL EVIDENCE.

When the venue was brought back to Middlesex by an attorney plaintiff, upon an undertaking to give material evidence in the cause upon some matter in issue arising within the Courts of Middlesex: Held, that the production of the roll in evidence was a sufficient compliance with the undertaking, and also with the rule of Court.

VENUE Middlesex.—The declaration stated, that defendants were the owners of a stage

coach running from Dongelly to Ruabon; that plaintiff was received as a passenger; and that by the negligently conducting, &c., the said coach was driven against a post, and the right arm of the plaintiff was greatly injured, &c.; and that plaintiff was prevented from following his occupation of an attorney at Dongelly assizes, and was deprived of great profits, &c., to the damage of the plaintiff of 500*l.*, &c. To this the defendant pleaded not guilty. The venue having been changed to Merionethshire, a rule was subsequently obtained to bring it back to Middlesex, upon an undertaking to give material evidence in the cause upon some matter in issue arising within the county of Middlesex. The evidence to be given in Middlesex was the production of the roll in which the plaintiff was entered as an attorney. At the trial no evidence was given of any special damage. A verdict was found for the plaintiff.

Martin, on behalf of defendant, now moved for a rule calling on the plaintiff to show cause why the verdict should not be set aside, and a nonsuit entered. The question was, whether evidence material to the issue was given in Middlesex. At the trial there was no evidence of any special damage, that was left to be inferred, and, without a special allegation in the declaration, the plaintiff would have a right to prove only the injury he received. [*Pollock*, C. B. The damages would be regulated by his situation in life, and how could it be proved that he was an attorney but by the production of the roll?] By proving that he had acted as an attorney; but the undertaking was to give material evidence of some matter in issue; how can it be said to be material evidence that the defendant was an attorney. [*Pollock*, C. B. Is the amount of damages a matter in issue?] He should say it was not. [*Pollock*, C. B. In all these cases where the defendant is allowed to pay a certain sum of money into Court, the question of damages is certainly material: suppose the question to be, whether the party is a justice of the peace or not, he may prove it by showing that he acted in that capacity, but if he chooses to prove it by the commission, he has a right to do so.] Certainly he has, but it would not be material: if the plaintiff had proved that he was an attorney, by proving that he had acted in that capacity, the defendants could not have set up that he was not an attorney upon the roll, and therefore this evidence was not material. He cited *Clark v. Dunsford*, 2 C. B. 724; *Greenway v. Titchmarsh*, 7 M. & W. 221.

Per curiam. Any evidence which bears upon the amount of damages is material. Suppose the plaintiff to have been practising without having been admitted, his clients would not have been bound to pay him; and therefore no damages could have accrued to him as an attorney. The evidence was material as showing what he lost by the accident, he being at the time really entitled to pursue his practice as an attorney.

Rule refused.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Law of Railways.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Law of Arbitration, p. 315.

Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

Pleadings, p. 121.

Evidence, p. 149.

Practice, pp. 169, 190.

Bankruptcy, p. 213.

Lunacy, p. 216.

Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.

Construction of Statutes, pp. 332, 351.

Law of Property and Conveyancing, p. 370.

Principles of the Common Law and Grounds of Action, pp. 393, 411.

Pleadings, p. 430, 451.]

ALLOTMENT LETTER.

Stamp.—A. applied by letter for shares in a railway company, and thereby undertook to accept the shares which might be allotted to him, to pay the deposit, and to sign the parliamentary contract and subscribers' agreement. In answer to this he received a letter, allotting to him a certain number of shares, and requiring him to pay the deposit thereon on a certain day, and stating that the committee reserved the power to cancel the allotment, without notice, on non-payment. In an action by A. to recover the deposit, the scheme having failed: *Held*, that the letter of allotment did not require a stamp. *Vollans v. Fletcher*, 1 Exch. R. 20.

ALLOTTEE OF SHARES.

1. *Recovery of deposits.*—The plaintiff signed an application for shares in a railway company provisionally registered. The application contained the usual undertaking to sign the subscribers' agreement and parliamentary contract, when required. The plaintiff had no letter of allotment, but having paid the deposit, received scrip certificates in the usual form, stating that "the subscribers' agreement and parliamentary contract had been signed by the person to whom the certificate was issued." The plaintiff, in fact, never signed either the subscribers' agreement or parliamentary contract. The scheme having proved abortive, in an action to recover back the deposit, *Held*, that the plaintiff had placed himself in the same situation as if he had signed the subscribers' agreement and parliamentary contract, and could not recover. *Clements v. Todd*, 1 Exch. R. 268.

2. An allottee of shares in a railway company provisionally registered, paid a deposit of 2l. 12s. 6d. per share, and signed the subscribers' agreement, which gave the provisional directors power to carry on the undertaking, or any part of it, or to abandon the whole, or any part of it; and out of the monies which should come to their hands by way of deposit or otherwise, to make such deposits or investments as might be required by the standing orders of parliament, and also to pay salaries, &c., and also the costs of obtaining acts of parliament, &c., and generally to apply such monies in paying and satisfying all other costs, expenses, or liabilities which they might incur in relation to the undertaking. The scheme proved abortive, and the company was dissolved under the provisions of the 9 & 10 Vict. c. 28. In an action to recover back the deposit: *Held*, that the plaintiff, by executing the deeds, had authorized the directors to dispose of the money, and therefore could not recover back any part of the deposit. *Garwood v. Ede*, 1 Exch. R. 264.

BROKERS.

See *Sale of Scrip*.

CALLS.

Shareholder.—The words "is a holder" in the 26th section of 8 Vict. c. 16, mean was a holder at the time of the calls made. *Belfast and County Down Railway Company v. Strange*, 36 L. O. 298.

See *Interest on Calls*.

COSTS.

See *Mortgage*.

DEPOSIT.

1. *Allottee of shares.*—An allottee in a projected railway company paid the deposit, and signed the parliamentary contract and subscribers' deed, whereby he authorized the directors to apply the money which should come to their hands for deposit, as required by parliament, or for salary or expenses, as they should think fit. The company was afterwards abandoned: *Held*, that the plaintiff could not recover back the deposit. *Garwood v. Ede*, 35 L. O. 14.

2. Deposits cannot be recovered from a railway company on the ground of fraud, unless the fraud is proved to have been committed before the payment. *Vane v. Cobbold*, 35 L. O. 414.

See *Allottee of shares*.

EXECUTION AGAINST SHAREHOLDER.

Notice under 7 & 8 Vict. c. 110, s. 68.—A notice in the alternative under the provisions of the 7 & 8 Vict. c. 110, s. 68, of an intention to apply to the Court or a judge for a rule or summons for the issuing of execution against a former shareholder of a joint-stock company, is exhausted by the taking out of a summons

before a judge at chambers, and does not warrant a subsequent original application to the full Court. *Corden v. The Universal Gaslight Company*, 36 L. O. 392.

INTEREST ON CALLS.

Construction of a railway act as to the forfeiture of interest on shares upon which the calls were not all paid up. *Naylor v. South Devon Railway Company*, 1 De G. & S. 32.

LIEN OF ATTORNEY.

See *Production of Parliamentary Contract*.

MORTGAGE.

Costs.—On the construction of the Eastern Counties' Railway Act, held, that the company were not obliged to pay the costs of discharging an incumbrance upon lands which they had purchased, such incumbrance being paid off with the purchase-money in Court. *Ex parte the Earl of Hardwicke*, 36 L. O. 349.

NOTICE.

See *Execution against Shareholder*.

PRODUCTION OF PARLIAMENTARY CONTRACT.

Lien of attorney.—*Extracts.*—When the parliamentary contract and the subscribers' deed are in the possession of a party to such deed who has acted on the committee, or of his attorney, or of the attorney to the company, the Court will compel the production of the deed for the inspection of an allottee who has commenced an action against such party, in order that such allottee may be enabled to take extracts necessary for him properly to frame his action. *Ley v. Barlow*, 35 L. O. 505.

PROOF OF DEBT.

Shareholder.—The secretary of a bankrupt railway company, although a shareholder, was allowed to prove against the estate of the company for the amount of his salary. Statute 7 & 8 Vict. c. 3. *Ex parte Green, in re Tring, Reading, and Basingstoke Railway Company*, 36 L. O. 271.

RECEIPT.

See *Scrip Certificate*.

SALE OF SCRIP.

Non-delivery.—*Usage of brokers.*—The defendant, who resided some distance from Liverpool, authorised the plaintiff, a broker there, to sell for him 20 railway scrip shares. The plaintiff sold them to C., another broker of Liverpool. The scrip shares were not delivered on the day, and C. bought 20 other scrip shares at the market price, and claimed the difference between the contract and the market price. The plaintiff paid him the difference, and brought an action for money paid to recover that sum. It was proved to be the usage amongst brokers at Liverpool to be responsible to each other upon these contracts, and there was evidence that the defendant was cognizant of this usage: Held, that the defendant was liable.

Semble. per Parke, B., and Rolfe, B., that the defendant's knowledge of the usage was

immaterial. *Bayliffe v. Butterworth*, 1 Exch. R. 425.

Case cited in the judgment: *Sutton v. Tatham*, 10 A. & E. 27.

SALE OF SHARES.

Railway shares were sold by auction, and the purchaser paid his purchase-money, but did not take a transfer. The purchaser then sold to a third party, who declined to register himself as owner: Held, that the vendor was entitled to a specific performance against the original purchaser. *Shaw v. Fisher*, 35 L. O. 483.

SCRIP CERTIFICATE.

Receipt.—A scrip certificate in a railway company is not an "accountable receipt," nor an "acquittance or receipt," within the meaning of the 11 G. 4, and 1 W. 4, c. 66, s. 10; therefore the forgery of such document is not a felony, but a misdemeanor only. *Clark v. Newsam*, 1 Exch. R. 131.

See *Sale of Scrip*.

SHARES, PURCHASE OF.

Return of money.—A. employed B., a sharebroker at Manchester, and lodged money in his hands, to procure for him 50 shares in a certain railway company. B., without disclosing the name of his principal, entered into a contract with H., another sharebroker, to purchase them for him. According to the usage of the stock exchange at Manchester, there are two "settling days" in each month, on which all transactions between brokers, and between them and their principals, are to be settled, although, in some instances, settlement is not enforced by the brokers on the prescribed days. H. did not perform his contract with B. by the next settling day; and B., having after that day refused to return A. his money: Held, that A. was entitled to recover it back from B. in an action for money had and received. *Fletcher v. Marshall*, 15 M. & W. 755.

Case cited in the judgment: *Hughes v. Hughes*, 15 M. & W. 701.

SHAREHOLDER.

See *Proof of debt; Execution*.

STAMP.

See *Allotment Letter*.

STOCK.

See *Transfer of*.

SUBSCRIBERS' DEED.

See *Parliamentary Contract*.

TRANSFER OF STOCK.

Acceptance of transfer.—A party having entered a transfer of stock in the form prescribed by stat. 11 G. 4, and 1 W. 4, c. 13, s. 13, cannot, in an action against the bank, dispute the title of the transferee, on the ground that he had not subscribed an acceptance of the transfer as directed by that clause. *Foster v. Bank of England*, 8 Q. B. 689.

Case cited in the judgment: *Rex v. Gade*, 2 Leach, C. C. 732.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

—————
SATURDAY, OCTOBER 14, 1848.
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—————"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HOBAT.

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APPEAL IN CRIMINAL CASES.

FULLY participating in the sentiment of unqualified veneration and respect universally entertained for the name of Lord Denman, we are forced to admit that a careful perusal of his evidence before the Lords Committee, on the Administration of Criminal Justice, recently published, justifies the members of the House of Commons, in our judgment, for declining to surrender their conviction to his lordship's views on the subject of a criminal appeal. The learned Lord Chief Justice deems an appeal in criminal cases unnecessary, because, in his opinion, an erroneous conviction seldom or never occurs, and he stated that it would be "almost impossible" for the judges of the Superior Courts to entertain special cases reserved from the Quarter Sessions, because "the time and attention of the judges were already thoroughly occupied with the concerns of their own Courts, and many other well-known duties." It is to be feared that Lord Denman—and indeed all the judges examined before the Committee—have suffered considerations of convenience\* to exercise too great an influence upon their judgments in this matter, and to them to the revolting anomaly ex-

hibited by the state of the law which freely permits a second investigation where property to the value of 20*l.* is in question, and peremptorily refuses it where the life or liberty of a human being is at stake. No subtlety of reasoning, no weight of personal authority, can or ought to satisfy the good sense of the community that such a glaring inconsistency should be longer maintained, or that its existence can be looked upon in any other light than as a scandal on the administration of the law. Fortunately for the interests of justice, the question is not one the determination of which rests peculiarly with persons of judicial habits and experience. Lord Denman states, no doubt correctly, that the first object of a judge presiding at a criminal trial is, "to prevent an improper conviction, as he feels that a wrong conviction not only reflects dishonour upon himself, but is one of the greatest public calamities, and the worst obstruction to public justice." It is easy to believe that a judge, acting under the influence of such feelings, reluctantly comes to the conclusion in any case that there has been an erroneous conviction, and the prevalence of such a disposition amongst the judicial body accounts in some degree for the startling assertion of Lord Denman, when he says that in every instance where a conviction was followed by subsequent investigation, "I was fully satisfied that the verdict was right, and would have been wrong if it had been the other way." His lordship also supposes that the other judges have come to a similar conclusion, for after

\* We do not of course mean that the judges shrink from any personal labour or responsibility, but that they think these appeals would interfere with their other more important duties. If that be so, in the sacred name of justice, let there be more judges.

stating that they acted with equal care, he adds, "Alteration of sentence may have been recommended, but I do not think we ever thought the verdict wrong." Now, in opposition to this judicial testimony, we shall only refer to two cases, which we find stated by Sir Fitzroy Kelly, in his evidence, in the following words:—

"I have stated in the House of Commons a case—it is but one of many—the case of Russell, the Huntingdon gaoler, who was capitally indicted for causing the death of a woman by administering medicines to procure abortion. Upon the defence an objection was made, which the judge peremptorily refused to reserve. The prisoner was convicted and about to be executed. The judge rejected my repeated and earnest solicitations to refer the case to the judges. At length, by a degree of importunity which, but that it was a matter of life and death, would have been quite unbecoming, he was induced to write to Lord Tenterden, and the Lord Chancellor (Lyndhurst) for their opinion, whether the point should be reserved or not. Upon their answer it was reserved; and when the case came before the 12 judges, they, without hesitation, were unanimously of opinion, (the learned judge himself concurring), that the point taken was fatal to the conviction. I am told that the prisoner is living, a reformed man, and a very useful member of society, who, but for the struggle with a judge which can scarcely be expected from a counsel at the bar, would have been put to death within four days of his conviction. Again, in the later case, which occurred at Exeter, of the six or seven Brazilian prisoners, the learned judge who tried those prisoners refused to reserve the point. They would have been executed, but happily he was induced to consult the other judge of assize, who thought there was doubt enough for the reserving of the point. It was reserved, and the conviction was set aside."

Now, if there were no other cases than the two thus narrated,—and there are many other cases as well authenticated,—it is quite clear the foundation of Lord Denman's opinion is removed. There have been erroneous convictions, the errors of which have been happily established, under the existing state of the law, and lives saved which might have been unjustly sacrificed. During the time that Mr. Wilde, the eminent solicitor, (brother of the Chief Justice,) was Sheriff of London, he saved the lives of several persons who had been convicted on fallacious testimony, and left for execution. The details of these remarkable cases appear in the evidence before the Criminal Law Commissioners.

Again referring to the language used by Sir Fitzroy Kelly, who appears to have satisfied the committee that he had pro-

foundly considered the subject, let us ask—  
"If there are these instances in capital cases, where, upon the slightest doubt, the point ought to be reserved, how numerous must be the cases in which judges, however eminent, and learned, and humane, yet being peremptory in their opinions, refuse to reserve the point,—refuse to grant the appeal,—where, if the appeal were granted, it would be found that they were clearly wrong, and that the parties had been illegally convicted?"

We find less fault with Lord Denman for his opinions on this subject, than for the manner in which he endeavours to account for the different opinions which prevail amongst the public, and we have some reason to think, amongst the members of the legal profession. His lordship says, there is undoubtedly a strong desire for a criminal appeal in some quarters, though not, as he believes, amongst the public at large. He admits that this desire arises principally from the extreme horror felt at the bare possibility of a person suffering death, or any other punishment, who may not be guilty,—a feeling which he acknowledges to be most laudable and deserving of every attention, although it may lead to excessive anxiety. Lord Denman then proceeds as follows:—

"But there are other causes for the spread of this alarm—the vast extent of the criminal public. There are many thousands in this metropolis who live by crime, and who have a great interest in imputing, that courts of justice are often mistaken. These criminals, and many who support and prosper by them, are possessed of no small capital, and a certain station, and have the means of disseminating their doctrines. \* \* \* \* \*

I think there is another reason for the outcry, which is a great desire, I think, on the part of many active and able persons attached to the law, to see a new court and a new course of practice, which would be popular and striking, and give a new scope for the display of their talents."

We confess we have read this last observation of Lord Denman's with considerable pain and regret. It conveys an illiberal, and, as we believe, an unjust imputation upon the members of a profession which we had hoped his lordship had known better, and would not have been so ready to disparage. It is scarcely fair to ascribe to the prevalence of selfish and interested motives, a desire to render the administration of justice more satisfactory and free from doubt; and considering the comparative insignificance in number and influence

of the persons "attached to the law," who could reasonably hope to find "a new scope for the display of their talents" in a Court of Criminal Appeal, we are disposed to regard the imputation as not only uncalled for, but unfounded. If personal imputations were to be indulged in upon every occasion in which questions of public concernment connected with the administration of justice are discussed, the effect might be to lower the Bench, as well as the legal profession, in public estimation.

So much for Lord Denman's evidence. The measure which, in direct opposition to his lordship's views, has obtained the sanction of the legislature, (11 & 12 Vict. c. 78, printed *ante*, p. 403,) although an amendment of the law, by permitting special cases from the Quarter Sessions upon criminal trials, is essentially different from that which the advocates of criminal appeal desire. The new act does not give a right of appeal to any party who is aggrieved. The appeal is in every case discretionary with the judge, and it is permitted only when the judge entertains some doubt upon a question of law, and not in cases where there is supposed to be a miscarriage upon matters of fact. The act places the chairman of a Quarter Sessions and the judges of the Superior Courts, in this respect, on an equal footing, by permitting the former to reserve questions of criminal law, upon which doubt is felt, for the consideration of the Court of Queen's Bench. The form in which this reference is to be made from the Sessions to the Queen's Bench is by "special case," a course of procedure necessarily attended with considerable expense and delay.

We do not anticipate that the stat. 11 & 12 Vict. c. 78, will be attended with any considerable practical benefit, beyond the assertion of the principle, that the Chairmen at Quarter Sessions are entitled, in cases of doubt, to the assistance of the judges of one of the Superior Courts. The question of the right of appeal in criminal cases remains to be discussed and determined upon, and it is to be hoped, when the subject is again brought under the consideration of the legislature, it will not be assumed that either the advocates or the opponents of the measure are influenced by unworthy motives, and that a question of so much public interest may be determined solely upon the merits.

## OPERATION OF THE STAMP LAWS.

THE operation of the Stamp Laws, in excluding evidence, has been productive of much injustice, and it is to be wished the law in this respect was altered; but whilst the law continues the Courts are bound to give effect to it, and it is desirable the profession should be put in possession of all the decisions having a general application. A case of this nature was argued and decided in the Court of Exchequer, during the last Term,<sup>a</sup> which demands an early notice.

In the course of a trial at *Nisi Prius*, the plaintiff had occasion to put in evidence a written instrument, purporting to be a memorandum of an agreement, framed in the past tense, and in which it was expressed that *A. B. had sold to C. D.* all the goods, stock in trade, and *fixtures* in a certain shop for 50*l.*, &c. The instrument in question, when produced, bore an agreement stamp, but it was contended it operated as a conveyance, and ought to have born an *ad valorem* stamp of 1*l.* 10*s.*

On the part of the plaintiff, it was submitted, that if it had not been for the introduction of the word "fixtures" in the agreement, it would have required no stamp; but that it was rightly stamped, not as a conveyance of the fixtures, but as an agreement to transfer them; for it was said they were, like a house, part of the freehold.

On the other hand,<sup>b</sup> it was contended, that every instrument ought to be stamped according to its legal operation;<sup>b</sup> and that the instrument in question, although framed in the past tense, operated as a transfer of the fixtures, and was not within the exemption in the Stamp Act.

The Court, after referring to the large and comprehensive terms in the schedule to the 55 Geo. 3, c. 189, under the title "Conveyance," &c., observed, that these words included not only transfers of all kinds of property, but any interest in, out of, or upon any property. That the present instrument was termed "a memorandum," made no difference, if it operated as a conveyance, and it was immaterial whether the words of the instrument were in the past or the present tense, if the parties intended the instrument to be a record of the transfer. It was argued by the plaintiff's counsel that, so far as related to the fix-

<sup>a</sup> *Horsfall v. Key*, 17 Law Jour. N. S. 266, Exch.

<sup>b</sup> See *Jones v. Ryder*, 6 Mees. & W. 35.



tures, the instrument could only operate as an agreement to permit the party to enter and sever the fixtures, and could not transfer the property before severance from the soil. The instrument, however, was the record of the transfer of fixtures, and whether by that was understood a transfer of the chattels themselves, or only of the right of severance, it was a conveyance within the comprehensive language of the Stamp Act, and as fixtures, though chattels, are not "goods, wares, and merchandise," they are not within the exemption. If the use of the past tense prevented an instrument from being liable to a stamp as a conveyance, the Stamp Laws might be readily evaded. Upon these grounds it was held, that the instrument in question was not admissible in evidence, unless stamped as a conveyance.

From this decision four rules of considerable practical importance are deducible:—1st, That the true test to ascertain whether any instrument is a conveyance, within the meaning of the Stamp Act, is to consider whether, if the subject-matter could only be transferred by writing, the instrument is framed in such terms as to transfer it; 2ndly, That *fixtures* are not "goods, wares, and merchandise," any memorandum relating to the sale of which is exempted from stamp duty; 3rdly, That a transfer of *fixtures*, although it may not transfer any interest in the chattels, at least transfers the right of severance to such fixtures as are attached but not part of the freehold, and therefore operates as a "transfer of any right," within the meaning of the Stamp Act. Lastly, that a memorandum of the sale of "goods and *fixtures*," in the past tense, is a record of a transfer, and requires to be stamped as a conveyance.

It is not suggested that these rules have been now established for the first time, or that any of them can be said to be inconsistent with previous decisions; but they are clearly developed, and have obtained a direct judicial sanction from the judgment of Baron Parke, in the case of *Horsfall v. Key*.

#### NOTICES OF NEW BOOKS.

*The Moral, Social, and Professional Duties of Attorneys and Solicitors.* By SAMUEL WARREN, Esq., F. R. S., Barrister-at-Law. London and Edinburgh, 1848. Blackwood & Sons; Benning & Co. Pp. 448.

WE gladly announce the publication of

Mr. Warren's Lectures, on the Moral, Social, and Professional Duties of Attorneys and Solicitors, which were delivered in Trinity Term last, in the Hall of the Incorporated Law Society. They will be warmly welcomed by our readers in general, and especially by the large class of articled clerks throughout the kingdom, and by the solicitors who have undertaken to instruct them in the duties of the profession.

The work comprises much more than was actually delivered at the Law Society, for the lectures there are limited to an hour, and it was utterly impossible to comprise all that is now published within that time. The lecturer also had confined himself to four discourses, and he necessarily therefore touched but briefly on some of the topics which are now expanded, and on some details now given, which were then unavoidably omitted. Many parts of the book, therefore, will be new to those who had the advantage of hearing the lectures delivered. Many additional cases have been referred to,—giving force by example to the doctrines enunciated, and many valuable notes have been appended in various parts of the volume.

The Council, soon after the completion of the course, tendered their cordial thanks, on behalf of the Society, to Mr. Warren for (as they justly termed them) "his highly valuable and interesting course of lectures. And being of opinion that the lectures were well calculated to maintain the station and character of the profession, and especially to stimulate and benefit its younger members, by aiding and directing their study of the law, and promoting honourable practice," the Council expressed their hope, "that Mr. Warren would extend the benefit of the lectures by an early publication of them."

Mr. Warren has accordingly carefully revised his lectures, and incorporated into them all the materials bearing on the subject which he had collected during 17 years watchful observation; and we are bound to say, that he has carried his views into effect in the work before us, in a very complete and masterly manner. To the great and powerful body to whom it is professedly addressed, numbering (as he observes) between 13,000 and 14,000,—including, of course, the same branch of the profession in Ireland and Scotland,—the work cannot fail to be highly interesting. To these the author might have added the practitioners in all the Colonies of the empire, who are not less interested in the subject, and the articled Clerks, making the total not less than 20,000.

Mr. Warren states, that the work is offered in a spirit of candour and independence; but at the same time with peculiar solicitude, and under an almost painful sense of responsibility. Many of the topics discussed required both firmness and delicacy in dealing with them, and we think that whilst paying merited respect to the station, character, and duties of the larger branch of the profession, he has not a whit compromised the honour and independence of his own.

There is one point to which we would call particular attention, and which will render the work valuable to unprofessional readers, and certainly to those who contemplate introducing their relations or connections into our ranks. The author has shown both to attorneys and solicitors and their clients, what are their reciprocal rights and duties: "that both parties are bound to be honourable, liberal, reasonable, and conscientious in their professional intercourse and dealings with each other; and that the true interests of the profession and the public are identical."

We propose from time to time, under distinct heads, to cull some of the more prominent parts of the lectures, and especially we shall notice the various instances either of excellence or defect which exemplify the rules laid down by the lecturer, and which will serve as beacons to guide or warn the future adventurer in the difficult course which he has to steer.

Amongst the brilliant passages with which the lectures abound, we find the soundest and most useful advice, as well to the Practitioner as the Student.—The hidden rocks and quicksands of which the young practitioner may be unaware, are here pointed out, and lights are raised to warn him of the dangers by which he is surrounded. The lectures abound with happy illustrations of the doctrines propounded, and striking examples are happily introduced, which cannot fail to impress upon the memory the importance of the lecturer's admonitions.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### IN THE LAST SESSION OF PARLIAMENT.

The Statutes effecting alterations in the Law passed during the last Session of Parliament, printed in this and the preceding volume of the *Legal Observer*, are as follow:—

Extending Time for making Railways, 35 L. O. 204.

- Regulating the Queen's Prison, ib. 555.
- North American Passengers, ib. 561.
- Crown and Government Security, ib. 600.
- Oaths in Chancery, p. 7, *ante*.
- Stamp Duties Assimilation, p. 8, *ante*.
- Trial of Controverted Elections, p. 23, *ante*.
- Removal of Aliens, p. 182, *ante*.
- Annual Indemnity, p. 221, *ante*.
- Suspension of the Habeas Corpus Act (Ireland), p. 280, *ante*.
- Poor Removal, p. 298, *ante*.
- Commons Inclosure, p. 324, *ante*.
- Game Certificates, p. 341, *ante*.
- Joint-Stock Companies, p. 357.
- Law of Elections, p. 377.
- Law of Bankruptcy, p. 377.
- Administration of Justice by Magistrates out of Sessions, p. 397.
- Administration of Criminal Law, p. 403.
- Summary Convictions of Magistrates, p. 417.
- Release of Bankrupts, p. 423.
- Evidence of Proclamations of Fines, p. 424.
- The Protection of Justices, p. 437, 442.
- Parliamentary Electors Rates, p. 460.
- Payment of Debts out of Real Estate, p. 460.

### THE LONDON (CITY) SMALL DEBTS' ACT, 1848. 11 & 12 VICT. c. 152.

An Act to amend the Act for the more easy Recovery of Small Debts and Demands within the City of London and the Liberties thereof. [31st August, 1848.]

1. 10 & 11 Vict. c. 71.—*Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud.*—Whereas an act was passed in the Session of Parliament holden in the 10 & 11 Vict., intituled "An Act for the more easy Recovery of Small Debts and Demands within the City of London, and the Liberties thereof:" and whereas doubts have arisen whether parties who have obtained a judgment or order in the Sheriffs' Court of the City of London, under the powers of the said act, for the payment of any debt or damages or costs, which judgment or order shall not be satisfied, can obtain a summons from the same Court, requiring the appearance in such Court of the party against whom such judgment or order shall have been obtained, so that such party may be examined before the judge of the same Court of and concerning such unsatisfied judgment or order, and proceedings had thereon, as in the said act is provided: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for any party who has obtained a judgment or order in the

Sheriffs' Court of the City of London under the powers of the said act for the payment of any debt or damage or costs, which judgment or order shall not be satisfied, to obtain a summons from the same Court, in case the party against whom such judgment or order shall have been obtained shall then dwell or carry on his business within the City of London, or the liberties thereof, such summons to be in such form as shall be directed by the rules made for regulating the practice of such Court, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons; and if he shall appear in pursuance of such summons, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is or are the subject of the action in which judgment has been obtained against him, and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid: and the costs of such summons, and of all proceedings thereon, shall be deemed costs in the cause.

2. *Power of commitment.*—And be it enacted, That if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of the judge, or if it shall appear to such judge, either by examination of the party, or by any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors, or any of them, or if it shall appear to the satisfaction of the judge of the Court that the party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether or by any instalment or instalments which the Court shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power in the said recited act provided, it shall be lawful for such judge, if he shall think

fit, to order that any such party may be committed to some gaol, house of correction, or other prison within the City of London, or the liberties thereof, for any period not exceeding 40 days.

3. *Short titles.*—And be it enacted, That in citing this act in other acts of parliament, and in legal instruments and proceedings, it shall be sufficient to use the expression "The London (City) Small Debts Act, 1848," and in citing the said recited act it shall be sufficient to use the expression "The London (City) Small Debts Act, 1847."

4. *Provisions of former act extended to this act.*—And be it enacted, That the said recited act, and all the powers and provisions therein contained, shall, so far as the same are applicable, extend to this act as fully and effectually as if the same were re-enacted in this act, and the said recited act and this act shall be construed together as one act.

5. *Public act.*—And be it enacted, That this act shall be a public act, and shall be judicially taken notice of as such.

#### DRAINAGE CERTIFICATES.

11 & 12 VICT. c. 119.

An Act to simplify the Forms of Certificates under the Act authorizing the advance of Money for the Improvement of Land by Drainage in Great Britain. [Sept. 4, 1848.]

1. 9 & 10 Vict. c. 101.—10 & 11 Vict. c. 11. —*Lands in second and subsequent certificates may be specified by reference to the first.*—Whereas an act was passed in the Session of Parliament holden in the 9 & 10 Vict., intituled "An Act to authorize the Advance of Public Money to a limited Amount to promote the Improvement of Land in Great Britain and Ireland by Works of Drainage," and the said act was explained and amended by an act of the last Session of Parliament: And whereas, doubts have been entertained whether, in cases where more than one certificate for an advance is issued in respect of the same provisional certificate under the said acts, the specifications of the lands should not be repeated in full in every such certificate, it is expedient that the provisions of the said acts as to such certificates of advance should be amended and explained as hereafter mentioned: Be it enacted and declared, therefore, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That where more than one certificate for an advance under the said acts or either of them shall be issued in respect of the works referred to in the same provisional certificate, it shall not be necessary in the second or any subsequent certificate for an advance in respect of such works to specify the land in respect of which such advance is to be made, except by way of reference to the specification in the first certificate of advance as hereinafter mentioned, but it shall be sufficient that such second and every subsequent

certificate shall certify that the land to be charged in respect of the advance under such certificate is the land which is specified in the first certificate of advance in respect of the works referred to in the same provisional certificate, and shall state the date of such first certificate, and the sum which the Commissioners shall have therein certified should be issued.

2. *Commissioners with approval of Treasury may cancel certificates, &c.*—And be it enacted, That it shall be lawful for the Commissioners, where they shall think fit, with the approval of the Commissioners of her Majesty's Treasury, notified by one of their secretaries by any memorandum in writing under the seal of the Commissioners, to cancel any certificate for an advance under the said acts upon which no advance shall have been actually made, and thereupon such certificate shall be wholly void; and it shall be lawful for the Commissioners to proceed as if no such certificate had been made or issued.

3. *Where cancelled certificate shall have been registered in Scotland, Commissioners to deliver a memorandum of cancellation, which shall be registered, &c.*—Provided always, and be it enacted, That where any such certificate which shall have been so cancelled as aforesaid shall have been registered in the General or Particular Register of Sasines in Scotland, the said Commissioners shall and may deliver to the owner of the lands, or the party to whom such certificate so cancelled as aforesaid was granted, or other party interested, a duplicate of the said memorandum of such cancellation, and such owner or party shall cause the said memorandum to be duly registered in the General or Particular Register of Sasines in which such cancelled certificate was registered, and the keeper of such register is hereby authorized and required to register the same accordingly, and to grant an indorsement on the said memorandum, certifying that the same had been duly registered.

4. *This act and recited acts to be one*—And be it enacted, That this act and the said recited act shall be construed together as one act.

5. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in the present Session of Parliament.

## TAXES ON JUSTICE.

### PURCHASE OF CHANCERY COMPENSATIONS.

ONE of our Correspondents lately made an important suggestion, which we hope will not be lost sight of, in order to relieve the present unfortunate Suitors in Chancery from the imposition of 70,000*l.* a-year, for the payment of compensations on abolished offices. Admitting (that which so many

stoutly deny) that the compensation is right in amount, the hardship is palpable, of throwing the whole burden on the suitors of the present generation. Our Correspondent's statement and recommendation are as follow:—

“The Suitors' Fund arising from unclaimed dividends, amounts to 3,000,000*l.* Some part of this fund might well be employed in buying up the compensations awarded for abolished offices. The parties entitled to the compensations will, no doubt, readily assent to reasonable inquiry at the Treasury, or at all events, let the 30,000*l.* a year of the surplus dividends arising from the 3,000,000*l.* be employed in the relief of the present suitors. Why should the burden of these compensations fall entirely upon the suitors of the present day, instead of being distributed over a period of sufficient extent to render the burden light.”

## TESTIMONIAL TO THE LATE LORD CHIEF JUSTICE TINDAL.

WE recently noticed the public meeting at Chelmsford, to raise a Testimonial of respect to the late Chief Justice Tindal. Several able addresses were delivered on the occasion, in the course of which some interesting statements were made relating to the character of the much-respected and eminent judge, and our readers will no doubt approve of our recording in our pages the following extracts from the report of the meeting:—

The Rev. C. A. St. John Mildmay, who presided, said, “It was amongst the first noticeable events when I came to this parish, to see the very remarkable interest expressed by the town on the first occasion of the Lord Chief Justice Tindal coming to preside at the assizes; I was then too little acquainted with his character, and the feeling and admiration of his townsmen, to know fully what that meant—I might think that it applied to his high legal position, but as I have since learned he had worked his way to the hearts of the inhabitants and the gratitude of the town by his highly christian character.—[Cheers.] It has often been said, that Christianity is part and parcel of the law of the land; and I think if ever there was a man competent to administer the law with a full reference to the highest duties of Christianity, it was the Lord Chief Justice Tindal. We all felt not only that the mere technicalities of the law were safe in his hands, but the highest interests of the country, the administration of so much of religion as must belong to the law, were safe, presiding as he did with the clearest understanding of what was due to the religious opinions and the christian consistency of all parties.—[Cheers.] I may also be permitted to say, being as it were the official advocate of the

charities in this parish, I feel I may represent the gratitude of those charities for his ready support of them on all occasions: perhaps there is no one who knows so much of his charities in this town as I do myself; and I can bear testimony that his hand was always open to support the charities of the town. Allow me to say, that I do not think this a meeting due alone to the memory of the Lord Chief Justice, but due also to those who come after him, and that we are testifying to succeeding generations that we approve of the highly religious and moral character that distinguished him, of which he imbibed the elements in this place, and which I must say, still marks the legal school of this town—that we desire when our young men are launched into life, they should feel that the respect and esteem of their fellow-townsmen is to be earned by attention to these duties, as much as by success in the duties of their profession—we desire they should see that one of the highest positions of this land was attained by a man as eminent for his christian character as for his legal attainments.”

The following are from the speeches of three of the eminent solicitors of Chelmsford:—

Mr. R. Bartlett, amongst other observations, said,—“The Chairman has alluded to the Christian character of the late Chief Justice, and as a man of the law I may be allowed to refer to him as the most eminent of the day as a constitutional lawyer, who always in all his judgments supported the constitution of his country, so as to secure for himself the admiration of all who heard or who read his judgments.—[Cheers.] As an old inhabitant, I feel there are none amongst us who do not feel pride in the honour of Chelmsford having been the birth-place of such a man. I am sure that there are none here but who must feel a pride in being an inhabitant of that town which has given birth to Lord Chief Justice Tindal, and none who do not desire that the memory of that great man should be perpetuated and carried down to posterity, to their children and their children’s children,—acting, as I have no doubt it will, as a stimulus to their exertions, to their hopes, and to their ambition;—showing them, that by pursuing the same persevering course, and maintaining the same unblemished character, they may attain to honours like those which Lord Chief Justice Tindal wrought out for himself.—[Cheers.] And may we not hope, with this before them, that many who now, perhaps, appear to have little right to look forward to, or to hope that they may attain, such honours as he attained, will find it an encouragement to them when they see that Lord Chief Justice Tindal in his youth had as little hope or expectation that he should be elevated to the high situation of Lord Chief Justice of the Common Pleas, as any one here, or the children of any one here. But he maintained that character we should always wish to see maintained—showing that it is only by pur-

suing the same Christian course to which the Chairman has adverted, that others may hope to secure the same success, and the esteem, respect, and admiration of their fellow townsmen; for it was not only his talents, but his really Christian character, and his desire to do all that should be done by a Christian man, that secured for him all that respect and veneration.”

Mr. Thomas Morgan Gepp,—“As an allusion has been made to me as an inhabitant of this place, I cannot refrain from giving the meeting an anecdote of the Chief Justice, which redounds to his honour and credit; especially as we have many of the fair sex here, they will be delighted to hear that the Lord Chief Justice, as many eminent men have done, acknowledged ‘I owe all to my mother.’—[Cheers.] I think we who have had the paternal care bestowed on us, must all feel that if the mother does her duty, the child, if he has anything in him, must turn out what we all wish—if she sows the good seed on a good soil it must lead to an abundant harvest.—[Cheers.] From my acquaintance with the Lord Chief Justice and his family, I am perhaps enabled to say more than many, and another anecdote I would wish to relate is this—when I had the honour and pleasure of walking or riding with him in this town as a judge, if we met any one he thought he ought to know, he never liked to pass him without recognition—if a gentleman met him and bowed, and I afterwards informed him who he was, the Lord Chief Justice would say, ‘why did not you tell me who it was, for I cannot bear passing in that way any one I ought to know;’—and this shows that though he was a great man he did not wish to forget his old friends.—[Cheers.] The chairman has alluded to his charities, and in connexion with them I will mention an interesting circumstance—I was one of those who had the melancholy satisfaction of following his remains to the grave, and on that occasion, on going from Bedford Square to Kensal Green, a long distance, we observed many persons who appeared to be strangers; when we arrived at Kensal Green, we observed them under great feelings of sorrow, and it turned out that these were persons who had been recipients of his bounty, and who had been relieved by his charity during his life.”

Mr. Veley:—“I have a motion to propose, and I am happy to address a few words to the meeting, for I believe I am the only member of the legal profession here who was educated at the Grammar School which has been alluded to, and my old master, Mr. Roberts, used to say to me and others, ‘Lord Chief Justice Tindal was educated here, and I hope many of you will follow his example;’ and I beg to express a sincere hope that that school will turn out many boys who will rise to eminence in this kingdom. I wish also to bring before this meeting an anecdote of the late Lord Chief Justice Tindal. I, with others, took great interest in St. John’s Church, Moulsham, and we addressed a letter to Lord Chief Justice Tindal, from whom we had an exceedingly kind reply, and he gave us as large a contri-

bution as any one, with the exception of two individuals. He also said, 'If you want more come to me and you shall have it.' Unfortunately before we made up our accounts he was taken hence; but his son gave us a second subscription."

The Reverend *Chairman*, at the conclusion of the meeting, observed that they felt for the Lord Chief Justice as a townsman, for really there had not been such a man on the bench since the days of Sir Matthew Hale, as to Christian character, and it must be a matter of pride that Chelmsford had produced a name that would go down to posterity by the side of such a man as Sir Matthew Hale.

SELECTIONS FROM CORRESPONDENCE.

SPOILED STAMPS.

EVERY professional man, without exception, is constantly complaining with regard to spoiled stamps, which is a subject of equal annoyance and loss to the profession, with very little, if any, disposition in the authorities to facilitate their allowance.

In truth, in many cases the refusal to allow them is anything but honest and fair. In too many cases no inconsiderable doubt exists as to the proper stamp, and on inquiry at the Stamp Office you are often left to your own discretion.

But the greatest hardship arises when a deed is executed on an improper or insufficient stamp. Thus, an agreement for a mortgage has a 35s. stamp affixed; it is found one of 5*l.* is proper, but the commissioners will *not* allow the 35s., although they will affix the 5*l.*—this is a crying evil and monstrous injustice.

Thus, for securing by way of mortgage 4,000*l.*, an 8*l.* stamp is affixed, whereas, by an oversight, the security is unlimited, a 20*l.* stamp becomes necessary, which can only be obtained on submitting to be mulcted in the loss of that for 8*l.* Cannot power be given to the commissioners to remedy this?

A LOSER.

SALARIES OF COUNTY COURT JUDGES.

I am strongly inclined to think, that the fixing of stipends of the county judges at 1,000*l.* a-year, will create an unpleasant feeling, if not something approaching a breach of faith. It was understood that their income should not be less than 1,200*l.*, which to a man of talent and experience, is by no means too large an income for the business done, of which few are better able to form an opinion than myself, having for nearly a quarter of a century acted as commissioner in a Court of Requests for 5*l.* debts.

A SOLICITOR.

REFORM IN CHANCERY.

I have heard it frequently advocated, that a reduction of the number of Masters in Ordinary in Chancery would be desirable. I however entertain quite a different opinion. On the contrary, I think a very considerable increase of their number would tend to facilitate and get through business.

Their chief clerks are very handsomely paid, that is 1,000*l.* a-year, just on a par with the judges of the County Courts,—I mean as to salary. I doubt, however, whether the clerks do not, in fact, by *copy-money*, realise half as much *more*; at all events, the subject is worth investigation, as I see no reason why the poor copyist should be paid 3*d.* per folio, when three times that amount is charged to the solicitor.

AN OLD PRACTITIONER.

STAMPS ON COPYHOLD CONVEYANCES.

IN reference to the observations in the No. of 30th September, on this subject, and considering the act 4 & 5 Vict. c. 35, I think it is manifest that in all cases in which a lord or steward admits a tenant out of Court, that such admission should be previously prepared in form and signed by the tenant and steward. It is obviously the intention of the legislature to affix the stamp on the *admission*, with a view to prevent fraud, and not on the memorandum of admission, the latter of which it would be equally improper, either to stamp or to enter on the Rolls.

The Court Rolls should be a literal transcript of the admission, with a short memorandum preceding it, stating that it took place out of Court under the act.

I subjoin the form of such a memorandum, and which has been adopted by stewards of great experience.

CIVIS.

Manor of } Be it known that  
in-the } a tenant of  
County of Surrey. }  
this manor having on the \_\_\_\_\_ day  
of 184 \_\_\_\_\_, made a surrender out  
of Court, to the use of \_\_\_\_\_ and his  
heirs; the duly stamped memorandum of such  
surrender made and signed at the time on which  
the same purports to have been, is now forth-  
with entered word for word in this book, con-  
taining the Court rolls of the said manor, pur-  
suant to the clause 89 in that behalf contained  
in the statute made in the session held in the  
4th and 5th years of the reign of Queen Vict.  
c. 35, as follows, (that is to say,)

## ATTORNEYS TO BE ADMITTED.

*Michaelmas Term, 1848.*

[Concluded from our last Number, p. 469, ante.]

**Queen's Bench.***Clerks' Names and Residence.**To whom Articled, Assigned, &c.*

|                                                                                            |                                                                                                   |
|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Lowndes, Edward Spencer, Liverpool; Doughty-street; Keppel-street; and Upper Albany-street | William Gandy Bateson, Liverpool                                                                  |
| Lewin, Spencer Robert, Duke-street, Portland-place                                         | Henry Lewin, St. Martin's-place                                                                   |
| Lowe, Thomas Frederic, 32, Store-street; Warrington                                        | William Beaumont, Warrington                                                                      |
| Lucas, Colston, 3, Fig-tree-court; Long Ashton                                             | Henry Abbot, Long Ashton                                                                          |
| Lawson, John Mair, 2, Montague-street, Russell-square; and South Petherton                 | John Nichollets, South Petherton; Henry Hill, Great James-street                                  |
| Looker, John Billingsley, 82, Farringdon-street                                            | John Looker, Oxford                                                                               |
| Ley, William Merriman, Bishop's Stortford                                                  | John Baron Bowker, Bishop's Stortford                                                             |
| Lightfoot, Alfred, 8, Claremont-terrace, New-road                                          | James Peachy, Salisbury-square                                                                    |
| Loaden, George, 28, Bedford-place                                                          | William Loaden, Bedford-place                                                                     |
| Langdon, William Spicer, Crewkerne                                                         | William Sparks, Crewkerne                                                                         |
| Little, George Hutchinson, Mornington Crescent                                             | D. Gray, Lincoln's-inn-fields; C. Clarke, Lincoln's-inn-fields; J. Woodcock, Lincoln's-inn-fields |
| Maddock, Charles, 59, Lincoln's-inn-fields; Brunswick-row                                  | Alfred Bell, Lincoln's-inn-fields                                                                 |
| Marcon, Andrew, Stafford-place, Pimlico; Bath                                              | Robert Crutwell, Bath                                                                             |
| Morris, John Weston, Lower Clapton                                                         | Messrs. Morris, Stone, and Townson, Moorgate-street-chambers                                      |
| Middleton, William Tym, Stone                                                              | John Tym Middleton, Stone                                                                         |
| Merriman, George Frederick, St. Paul's-place, Clapham                                      | Benjamin Field, Lincoln's-inn-fields                                                              |
| Mason, Joseph, York                                                                        | William Jackman, York                                                                             |
| Marshall, John Thomas, Beckenham; and Southampton-street, Strand                           | H. E. Stables, Cophthall-court; R. Gadsden, Bedford-row                                           |
| Noble, Thomas Shepherd, Everett-street, Russell-square; and York                           | Robert Henry Anderson, York; Charles Lever, King's-road, Bedford-row                              |
| Nelson, Thomas James, 24, Finsbury-circus                                                  | William Lowless, Hatton-court, Threadneedle-st.                                                   |
| Nicholson, Frederick William, 10, Park-road, Clapham-road; and Upper Kennington-lane       | Richard Hutchinson Nettleship, 15, Clifford's-inn; Alfred Jones, Sise-lane                        |
| Norton, John, jun., Bloomsbury-street, Bedford-square; Brecknock-crescent                  | Thomas Pinchard, Wolverhampton                                                                    |
| Owen, Thomas, 47, Walcot-square, Lambeth                                                   | William Jones, St. Mildred's-court                                                                |
| Oates, Joseph Henry, jun., 4, Pelham-villas, Brompton; Leeds; and Milman-street            | W. L. Ford, Leeds                                                                                 |
| Phillips, George, 36, Grove-place, Brompton; Guildford-street; Wem; and Shiffnal           | Henry John Barker, Wem                                                                            |
| Petkins, Richard Wicksted, 2, Charles-street, Gibson-square; and Warrington                | Joseph Wagstaff, Warrington                                                                       |
| Poole, Edward, Kenilworth; and Margaret-street, Cavendish-square                           | William Savage Poole, Kenilworth                                                                  |
| Parson, Joseph William, Balham-hill, near Clapham; and Pancras-lane                        | Alfred Thomas Israel Baker, Pancras-lane                                                          |
| Palmer, Charles Edward, 23, Wakefield-street, Regent's-square; and Doncaster               | William Palmer, Doncaster                                                                         |
| Parker, Thomas, Blackburn; and Kingsland-road                                              | Peter Ellingthorpe, Blackburn                                                                     |
| Pickett, Henry, 13, Warwick-court; and Chapel-street, Bedford-row                          | Broome Pinniger, Newbury                                                                          |
| Phillips, Thomas, jun., 20, Featherstone-buildings; and Plymouth                           | Thomas Phillips, sen., Plymouth                                                                   |
| Payne, George, Hadleigh                                                                    | Henry Offord, Hadleigh; John Frederick Robinson, Hadleigh                                         |
| Perry, John Connorton, 2, Somerset-place, Camberwell; and Blandford-terrace, Bermondsey    | Abraham Cutto, Bark-street, Southwark                                                             |
| Pierce, Walter, 23, Warton-street, Pentonville                                             | E. B. Garey, Southampton-buildings; P. Simpson, Bedford-row                                       |
| *Prescott, George William, 33, Charlotte-street, Islington                                 | Thomas Mortimer Cleobury, 30½, Sackville-street, Piccadilly                                       |

This application is in the Common Pleas.



- Robinson, Alfred Murray, 17, Orchard-street, Portman-square . . . . . Alfred Robinson, 17, Orchard-street.
- Rowley, L. Pemberton, 14, Alfred-street; Edg-  
baston . . . . . John Rawlins, Birmingham
- Rogers, Arundel, 24, Great James-street, Bedford-  
row; Reading . . . . . Thomas Rogers, jun., Reading; William Kingdon,  
Bedford-row
- Robinson, George, Olney . . . . . John Garrard, Olney
- Russell, James, 23, Martin's-lane, Cannon-street . . . . . Robert Russell, 23, Martin's-lane
- Ray, Henry Carpenter, Iron Acton; 61, Upper  
Brooke-street . . . . . Henry Ray, Bristol
- Rolt, Daniel Brunson, 3, Lower Calthorpe-street . . . . . E. W. Field, Bedford-row
- Strong, Sydney Gore Robert, 49, Jermyn-street; . . . . . Frederic Page Keeling, Colchester; Keith Barnes,  
Myland, Colchester; Great Portland-street . . . . . Spring-gardens
- Sykes, Thomas, 6, Hungerford-street, Strand; . . . . .  
Sheffield . . . . . George Mathewman Jervis, Sheffield
- Sharpe, Gillies Payne, 59, Lincoln's-inn-field's; . . . . .  
Wimpole-street . . . . . Samuel Steward, 59, Lincoln's-inn-fields
- Smith, George Moore, 22, Webb's County-terrace; . . . . .  
Whittlesey . . . . . John Peed, Whittlesey
- Stark, Alexander, 21, Spencer-street, Northamp-  
ton-square . . . . . William Galsworthy, Poultry; Nicholas Bennett,  
Furnival's-inn
- Sheffield, William, Mare-street, Hackney . . . . . Isaac Sheffield, Old Broad-street
- Stokes, John William Noble, 1, Danvers-street, . . . . .  
Chelsea . . . . . Charles Buck, Preston; William Dickson, Preston
- Sheard, Henry, 33, Pembroke-square, Kensington . . . . . Thomas Parker, St. Paul's-churchyard
- Shelly, Edward Henry, 13, Park-place-villas, . . . . .  
Maida-hill; Beccles . . . . . Messrs. Bohun and Rix, Beccles
- Smith, Charles, 8, Hackney-grove, Hackney . . . . . Thomas Bentley Hudson, Finsbury-place, South  
Thomas Baker, 34, Lime-street
- Shuttleworth, Fauconberg, Tottenham-green . . . . . G. A. Crowder, Coleman-street
- Senior, Thomas, Wakefield . . . . . Henry Brown, Wakefield
- Stark, Robert Mozley, 8, Halliford-street, Isling-  
ton; and Wakefield . . . . . J. M. Janson, Wakefield.
- Saunders, T. J. Goulding, 20, Ely-place; West . . . . .  
Lodge, Hammersmith . . . . . Thomas Saunders, Guildhall
- Sawbridge, Charles, 17, Lower Park-street, Is-  
lington . . . . . John Watson, jun., Henrietta-street; J. Watson,  
Wood-street
- Savage, Robert, jun., 11, Montague-place, Russell-  
square . . . . . F. Broderip, New-square, Lincoln's-inn
- Thursfield, John Hunt, 5, St. James's-terrace, . . . . .  
Camden-town; Wednesbury . . . . . Charles Hunt, Wednesbury
- Tomlin, George Taddy, 36, Sidmouth-street, . . . . .  
Regent's-square; Canterbury . . . . . George Farley, Canterbury
- Toynbee, Samuel, 26, Albert-street, Regent's-  
park; Boston . . . . . John Boyfield Millington, Boston
- Taylor, Richard James, 35, Poultry; and Dorstin-  
house, near Leominster . . . . . Edward Pritchard, Hereford; James Robinson,  
Queen's-street-place
- Turner, Jas. Augustus, 37, Queen-square; and . . . . .  
Staplegrove . . . . . Abraham Turner, Taunton; T. H. Strangways,  
King's-road
- Tylee, Henry, 14, Essex-street, Straud; and . . . . .  
Southampton . . . . . H. W. Moberly, Southampton
- Thornton, Henry Australia, 3, Southampton-place, . . . . .  
Camberwell . . . . . G. A. Crawley, Whitehall-place
- Townson, John, 4, Great Percy-street, Pentonville; . . . . .  
and Kirkby Lonsdale . . . . . Thomas Eastham, Kirkby Lonsdale
- Tomkin, Alfred Royce, 2, Regent's-place, West, . . . . .  
Regent's-square; Ipswich . . . . . George Josselyn, Ipswich
- Tilsley, Edward Hugh, Vassal-road, Brixton . . . . . Thomas Bristow Young, New-inn
- Vallotton, Theodore James, 2, Hyde-park-gate, . . . . .  
Kensington-gore . . . . . Francis Philip Hooper, Sackville-street
- Varley, Alphonso Rowland, 8, Buckingham-street, . . . . .  
Strand; Snaresbrook . . . . . Matthew Dawes, Bolton-le-Moors; Charles Fletcher  
Skirrow, Bedford-row
- Walters, Laundry, Tottenham . . . . . Stephen Walters, Basinghall-street
- Ward, Frank Cavendish, 22, Newland-street, . . . . .  
Euston-square; Coleshill-street, Pimlico . . . . . Peter Haydock, Preston; Robert George Clarke,  
Craven-street
- Williams, George, Bristol . . . . . Edward Clark, Bristol
- Wilson, Thomas, Maida Hill, West . . . . . Joseph Briggs Dickson, Preston; Thomas Wright  
Nelson, Gresham-place
- Wright, Joseph, Doncaster . . . . . Thomas Blackwell Mason, Doncaster
- Warren, Robert, jun., 87, Gloucester-place, Port-  
man-square . . . . . William Mark Fladgate, 43, Craven-street
- Williamson, James, jun., 39, Hunter-street, Bruns-  
wick-square . . . . . James Williamson, 10, Great James-street
- Wallis, John Chapinan, 2, King-street, Portman-  
square; Bristol . . . . . Brooke Smith, Bristol

|                                                                                                 |                                                                          |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Watkins, Thomas Powall, 19, Harpur-street ;<br>Worcester                                        | Charles Bedford, Worcester                                               |
| White, Alexander Miller, Clapham ; Brompton ;<br>Colchester                                     | Henry Griffin Dean, Colchester                                           |
| Woodley, Charles Henry, 23, Bedford-row ;<br>Teignmouth                                         | John Whidborne, Teignmouth                                               |
| Warrall, Frank, 41, Great James-street ; Glengall-<br>grove ; and Bernard-street                | J. R. Rush, 13, Austin-Friars                                            |
| <i>Added to the List pursuant to Judges' Order.</i>                                             |                                                                          |
| Bennet, William, jun., Chapel-en-le-Frith ; and<br>Manchester                                   | W. Bennet, Chapel-en-le-Frith ; C. H. Wood,<br>Manchester                |
| Grazebrook, Henry Goodwin, Chertsey                                                             | D. Grazebrook, Chertsey                                                  |
| Harrison, Edwin Albert, Trafalgar-terrace ; and<br>7 & 13, Blenheim-terrace, De Beauvoir-square | Alexander Harrison, Birmingham                                           |
| Hicks, William, 14, Bedford-street ; and Hertford                                               | Philip Longmore, Hertford                                                |
| Nisbett, Archibald, West Brixton                                                                | Thomas Graham, Mitre-court-chambers                                      |
| Piper, George Harry, Ledbury                                                                    | Thomas Jones, Ledbury                                                    |
| Rhodes, Frederick Jackson, Market Rasen                                                         | Thomas Rhodes, Market Rasen                                              |
| Stevenson, Anthony, 19, Essex-street, Strand                                                    | G. K. Pollock, Essex-street                                              |
| Tucker, William Owen John, Leyton, Essex                                                        | W. O. Tucker, Threadneedle-street                                        |
| Warner, Charles, 4, Lower Calthorp-street, Red-<br>lion-square ; and Odiham                     | George Lamb, Basingstoke and Odiham ; William<br>PHELPS, Red-lion-square |
| Warner, William Harding, 7, Millman-street, Bed-<br>ford-row ; Clapton ; and Clapham            | H. J. Harvey, Bath ; G. Dawes, Angel-court                               |
| Winterbottom, Lindsey W., Cirencester ; and<br>Tewksbury                                        | R. Mullings, Cirencester                                                 |

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

*Yeursley v. Budgett.* June 16, 1848.

PRO CONFESSO.

*Upon an application for an order to take a bill pro confesso, the Court requires evidence of due diligence in the execution of the writ of attachment, as well as a return of non est inventus.*

In this cause Mr. *Spurrier* moved that the bill might be taken *pro confesso*, upon affidavits which stated the facts of an attachment against the defendant having been issued and placed in the hands of the sheriff's officer, and of a return of *non est inventus*.

Lord *Langdale*, however, refused to make the order without the production of an affidavit by the officer charged with the execution of the attachment, deposing that he had used due diligence in endeavouring to execute it.

—

*Smith v. Olive.* August 9, 1848.

CONFIRMATION OF REPORT.—CONSENT.

*Where all parties are sui juris, a report may be confirmed by consent, and payment of legacies ordered.*

In this cause, the parties being all *sui juris*, Lord *Langdale*, upon the application of Mr. *Forster*, allowed the report to be confirmed by consent, in every respect except as to three legacies, as to which exceptions had been

taken, and an order to be made for the payment of the other legacies, as to which no exceptions were taken, upon an affidavit that the sums paid were the same as were reported to be due.

### Vice-Chancellor of England.

*Pritchard v. Murray.* July 13, 1848.

ANSWER.—EXCEPTIONS FOR INSUFFICIENCY.—GENERAL ACCOUNT OF ASSETS.

*In a suit against an assurance company by a party entitled to certain policies, and who claimed a lien on the funds of the company in respect of other policies, the company having paid the amount on the policies due, and by their answer denied that the plaintiff had any lien in respect of others, at the same time stating their funds were ample to pay all liabilities: Held, that the plaintiff was not entitled to call for a general account of the assets of the company.*

A BILL was filed by the representative of a person who had effected two policies of assurance on his life, in the National Union Assurance Company for 2,000*l.* and 1,000*l.*, for the purpose of obtaining payment of the amount. The company at first refused to pay, but subsequently did so. The bill also alleged that there were other policies effected by the de-

ceased, and it sought a discovery of them, claiming at the same time a lien upon the funds of the company in respect of them, alleging also, that various improper investments had been made of the funds of the company, and insisting upon a full, true, and particular account of the assets of the company. The defendants by their answer denied that any other policies had been effected by the deceased, they declared that they then had and always had had sufficient assets to answer any demands which might be made upon them, and they refused to give an account of their assets. Exceptions were taken to the answer by reason of the refusal on the part of the defendants to give an account. The Master overruled the exceptions, and the case now came on on exceptions to the Master's report.

Mr. Terrell, for the exceptions, contended, that as the plaintiff claimed a specific lien on the funds of the company, he was entitled to have an account of such funds. In an ordinary administration suit, a legatee, for instance, could not call for an account where sufficient assets were admitted by the answer; but this differed from the ordinary case, inasmuch as the plaintiff sued on his own account alone, and moreover was driven into equity, being precluded from suing the directors personally at law, by reason of the terms of the policies.

Mr. James, contra, went on the general proposition, that where assets were admitted it was unnecessary to set out an account. Mitford's Pleading, 4th edit. p. 312. If the plaintiff claimed a specific lien on the funds of the company, why were not all the other holders of policies made parties? 1st vol. Daniel Chan. Prac. p. 252.

The Vice-Chancellor said, he thought the proceedings in a case where a bill was filed by a legatee were completely conclusive of the proceedings in the present case; and that there was no necessity for the defendants to give the account required. The ordinary remedy in a suit by a legatee was a motion to have the money paid into Court; that remedy he could not give in the present case, because from the answer it appeared that whatever was due had been paid; he should therefore overrule the exceptions with costs.

Vice-Chancellor Knight Bruce.

(In Bankruptcy).

*Ex parte Reid, re Buckland.* Wednesday,  
May 3, 1848.

EQUITABLE MORTGAGE. — LEASE. — PRIORITY OF INCUMBRANCE.

A. B., the owner of an agreement for a lease, deposited it with C. D. as a security, and afterwards obtained from the lessor a lease in somewhat different terms from those in the agreement. Upon the lease being granted, A. B. deposited the same with the lessor as a security, and shortly afterwards, under a false pretence, obtained possession of the lease, and handed it over to E. F. as

a security. E. F., upon receiving from C. D. the money due to him, gave the lease to C. D. A. B. became bankrupt: Held, that the lessor had the prior charge upon the lease, and that C. D., by means of the deposit of that agreement, had a lien on the lease, notwithstanding the variations.

The petitioners in this case were Reid & Co., the brewers, and they claimed to be equitable mortgagees of two public-houses of which the bankrupt was lessee. By an agreement, dated the 14th of September, 1846, Mr. Tyler contracted to grant a lease of the British Queen public-house to the bankrupt, who, on his part, agreed to pay an annual rent of 154*l.*, and to pay Tyler 500*l.* within three months after a licence should be obtained for the house. This agreement was, on the 19th of October, 1846, deposited by the bankrupt with the petitioners, Messrs. Reid & Co., as a security for their advances to him. In August, 1847, the bankrupt requested Tyler to grant him the lease, without alluding to the payment of the 500*l.* premium, as the insertion of such a stipulation might prevent him from obtaining a licence for the public-house. Tyler accordingly, by arrangement, granted a lease to the bankrupt of more ground for a larger term, and at a higher rent than had been originally contracted for, and the bankrupt deposited this lease with Tyler as a security for the 500*l.*, at the same time giving his bond for that amount. In September, 1847, the bankrupt applied to Tyler's solicitor to lend him the lease for the purpose of producing it to the magistrates and obtaining the licence; and on his signing a memorandum undertaking to return it on demand, the bankrupt was permitted to take the lease. The bankrupt then deposited the lease with a person of the name of Walker, as a security for 73*l.* Walker subsequently, by the direction of the bankrupt, handed over the lease to the petitioners, they paying him the 73*l.*, and retaining the lease as part of their security.

The question argued on the petition was, as to the priority of incumbrance between Mr. Tyler and the petitioners.

Mr. Swanston and Mr. Jackson appeared for the petitioners, and Mr. Russell, Mr. Bacon, Mr. Kenyon Parker, Mr. Malins, and Mr. Steere, for the respondents.

His Honour said, he was of opinion that the petitioners' security must be postponed to Mr. Tyler's. The lease had been obtained from Mr. Tyler's custody under a false pretence, neither Mr. Tyler nor his solicitor intending to enable the bankrupt to commit a fraud. Their permitting the bankrupt to have the lease under such circumstances would not postpone Mr. Tyler's claim. The petitioners acquired by the deposit of the agreement a lien on the lease when granted, and he did not think the variations between the lease and the agreement sufficient to displace their claim, so far as regarded the particulars to which the agreement extended.

## Court of Queen's Bench.

(Before the Four Judges.)

*Westaway v. Frost.* Trinity Term, 1848.

ATTORNEY. — ACTION ON THE CASE. — PLEADING.

*An allegation in a declaration that C. D., an attorney, without the authority of A. B., entered an appearance for him, and took upon himself to defend an action brought against A. B., and that judgment and execution followed, and that A. B. was thereby injured in his credit and character, is bad, as not disclosing a legal cause of action.*

THIS was an action against an attorney, to recover from him compensation for damages, which it was alleged his unauthorised interference in an action brought against Westaway had occasioned to that person. The declaration, which was in case, stated that Frost was an attorney, and that an action had been brought in the Court of Exchequer, against Westaway, by one Dyer; that Westaway did not intend to defend the same, nor had Frost been retained by Westaway to defend it; but that Frost being such attorney as aforesaid, and contriving, &c., did wrongfully, and without the consent, authority, or retainer of Westaway, and without any just or reasonable cause, enter an appearance for Westaway, and without Westaway's consent, authority, or retainer, take on himself to manage the defence of the said action, and that such proceedings, &c.; that afterwards, &c., it was adjudged by the said Court of Exchequer, that Dyer should recover 8*l.* 9*s.*, and thereupon execution was afterwards issued, and Westaway was obliged to pay the sum so recovered, with 9*l.* 8*s.* 6*d.* costs, and that Westaway, by reason of the premises, was thereby then greatly injured in his credit and character, &c., and put to great loss, &c., to his damage, &c. The defendant pleaded—1st, not guilty; and 2ndly, that the defendant was retained and employed by the plaintiff. The cause was tried in Devonshire before Mr. Justice Wightman, when a verdict was returned for the plaintiff for 93*l.* 18*s.* A rule was afterwards obtained to arrest the judgment, on the ground that the declaration did not disclose any legal cause of action, or show that the plaintiff had sustained damage from the act of the defendant.

Mr. Greenwood showed cause. The plaintiff is entitled here to recover damages, and his title to them is sufficiently set forth on the face of the declaration. If damages might have been occasioned to the plaintiff from the defendant undertaking without authority to act for him, the Court will, after verdict, presume that such damage was so occasioned. *Marzetti v. Williams*,<sup>a</sup> shows that such an action as the present may be maintained, though no actual damage is sustained. The observations of Mr. Justice Taunton are strong on that point. *Pryce v. Belcher*<sup>b</sup> shows, that in an action of this sort it is not necessary to explain the exact circumstances which occasioned the injury, and to develop the course through which they oc-

casioned it. In Comyn's Digest,<sup>c</sup> it is said that the action will lie in all cases where a man has sustained a temporal loss or damage by the wrong of another. That is exactly the case here. The act of the defendant was wholly without authority and wrongful, and the plaintiff having suffered damages thereby, is entitled to compensation. [Mr. Justice Patteson. But admitting that principle, where is the averment here, which shows that the plaintiff did suffer damage through the wrongful act of the defendant?] The declaration sets forth the circumstances, the acting without authority in defending an action, whereby costs must necessarily be incurred, was a wrongful act, for which the plaintiff is entitled to recover. But supposing the averment of the cause of action to be insufficient in showing exactly how the damages came to arise from this act of the defendant, if there is a good cause of action, though it may not be shown with proper technicality, its defectiveness will be cured by verdict: *Hiphins v. Stevens*.<sup>d</sup> In that case, which was an action of debt for rent, where there had been a lease to the defendant by A., and a subsequent grant of the reversion by him to the plaintiff, there was no allegation of an attornment under the reversion. After verdict there was a motion in arrest of judgment, and the declaration was held good after verdict, for that it must then be inferred that everything necessary had been perfected. [Mr. Justice Patteson. You can never make me think that by a third party entering an appearance for a man, the probability of a judgment against him is increased beyond what it would have been had the plaintiff in the action entered the appearance for him, and the plaintiff was entitled to enter an appearance for him.] That is not necessary here. The wrong consisted of the act of defending the action without authority, and there is the positive averment here, that the defendant did so, and that Westaway did not intend to defend the action. [Mr. Justice Patteson. But nothing is said in this declaration beyond the allegation, that the defendant entered an appearance. Nothing is said about the pleading, otherwise it might perhaps be shown that the pleading did injure the plaintiff's credit and character.] To assume to act for another without his authority is itself a wrongful act, and the law will not assume that a wrongful act can be done without injury. If damage might by possibility have followed from the act of the defendant, then after verdict it will be assumed to have followed. *Hall v. Marshall*.<sup>e</sup>

Mr. M. Smith was not called upon to support the rule.

Lord Denman, C. J. I am glad that the question has been fully discussed, but I can have no doubt that on the declaration as it now stands, this action is not maintainable. Though the defendant had been guilty of an illaudable proceeding, a little more is wanting in the declaration, to show that he has thereby subjected himself to damages. There can be no doubt

<sup>a</sup> Fit. Action on the case, A.<sup>d</sup> Sir T. Raym, 487.<sup>e</sup> Cro. Car. 497.

that this declaration is bad. The act of entering the appearance is charged as the wrongful cause of damage, but to enter an appearance is not necessarily a cause of injury to the character and credit of a party, and this declaration does not show how in this instance it became so. The rule must be absolute.

Mr. Justice *Patteson*. There is nothing in the declaration which approaches to a good allegation of legal damage. I cannot understand any part of it which bears that character. It states the entry of an appearance by the defendant for the plaintiff, and that execution and judgment thereafter followed; and it goes on to say in general terms, that "by reason of the premises" the plaintiff was injured in his credit and character. But it is not shown how this injury occurred through entering an appearance, and that act alone is not of itself and necessarily a cause of such injury. Rule absolute.

### Court of Eschequer.

*May v. Seyler*. June 12 & 14, 1848.

PLEADING.—BILL OF EXCHANGE.—CONSIDERATION.

*To an action on a promissory note the defendant pleaded no consideration to himself or his indorsee (who indorsed to the plaintiff.)* Replication, there was consideration: Held, upon demurrer, that the replication was good, and that it was not necessary to aver to whom the consideration was given.

DEMURRER. Declaration upon a promissory note by indorsee against indorser. Plea, that the note was indorsed by defendant, and by him delivered so indorsed to G. D. Papanicholas, and by him received upon the understanding that it should be negotiated for the purpose of taking up a certain bill of exchange; that G. D. P. did not take up the said bill with the said note, but circulated it for another and different purpose, &c.; and that there was no value or consideration from the plaintiff to the defendant, or to the said G. D. P. for his indorsement of the said note, except, &c., or for the delivery, &c. Replication, that there was good value and consideration for the holding of the said note by the plaintiff. To this replication the defendant demurred, upon the grounds that it did not traverse the plea, and that it was uncertain to whom the consideration was given.

*Phipson*, in support of the demurrer. The replication should state expressly to whom the consideration was given. As the issue stands, the defendant might be taken by surprise at the trial by the plaintiff proving some consideration given to a stranger to the bill. It may be that some consideration was given to a third person at the desire of Papanicholas, who indorsed the note. We have no means of knowing from whom the plaintiff took the bill, or under what circumstances. Under this issue the defendant has no means of raising any matter of fraud or stealing of the note which may have taken place. The plaintiff ought to have said that he received the note

from A. B., who was the lawful owner, and that he gave him value. Then the question might have been raised, whether he was the lawful owner, and whether consideration was so given for the note. The whole transaction was within the knowledge of the plaintiff, and not of the defendant. He referred to *Arbouin v. Anderson*, 1 Q. B. 498.

*Martin*, contra. The replication was clearly good upon the very case of *Arbouin v. Anderson*: there *Wightman, J.*, said:—"The plea would be bad on special demurrer; and I have great doubt whether it would not be so on general demurrer likewise; for it is not inconsistent with the facts stated that the plaintiff may have given good consideration. At all events the replication is good in confession and avoidance. Here it was sufficient that the plaintiff traversed a material allegation in the plea. [*Alderson, B.* If you strike out the last averment, the plea is a bad plea, and may you not traverse that which makes it a good plea in the words of the plea. Though the replication is certainly open to this objection, that you cannot prove you had given value to Papanicholas, or to the defendant, or to a stranger.] [*Platt, B.* Do you traverse the want of consideration with sufficient certainty?] We traverse it in the very words of the plea. *Bennett v. Filkins*, 1 Saund. 21, a; *Hayman v. Gerrard*, 1 Saund. 103, a; *Wakeman v. Sutton*, 2 Ad. & E. 78; *Earl of Stirling v. Clayton*, 1 C. & M. 241.

*Phipson*, in reply. The plea states there was no good and valid consideration to Papanicholas or the defendant for the holding of the said note. The replication merely states there was good consideration, it does not state to whom. He cited *Easton v. Pratchett*, 1 C. M. & R. 798; and contended that if the plea was good, the replication was bad, because it did not entirely traverse the material allegation. The case of *Arbouin v. Anderson* does not decide this point.

*Pollock, C. B.*, (June 14,) gave judgment. We think the replication good, and that the plaintiff is entitled to our judgment. We took time to consider whether the replication was bad as being too general. The case of *The Earl of Stirling v. Clayton* was referred to as establishing that when a matter averred was denied on the part of the defendant, and was traversed in the replication, the plaintiff must show something more than a mere traverse. The difference between that case and this is, that in an action upon a bill of exchange, the law throws upon the defendant the onus of proving the want of consideration, except in cases where the bill has been lost or stolen, when it may be that the onus is cast upon the plaintiff; therefore, as it is not incumbent on the plaintiff to prove consideration, it is sufficient that he simply denies the want of it. We therefore think the judgment should be for the plaintiff. The defendant, however, to have leave to amend.

Judgment for plaintiff; leave to amend.

## Court of Bankruptcy.

*In re Saul.* Tuesday, Sept. 26, 1848.

## BANKRUPTS' RELEASE ACT. — CONSTRUCTION.

The power given to the Commissioners in Bankruptcy, under the stat. 11 & 12 Vict. c. 86, is applicable only to two classes of bankrupts:—1st, those in prison when the fiat issues; and 2ndly, those who have been adjourned sine die, or whose certificates have been suspended or refused.

A bankrupt who has passed his last examination, and has not yet applied for his certificate, is not within the meaning of the act.

Application was made to Mr. Commissioner Holroyd, under the recent act, 11 & 12 Vict. c. 86, to order the release of a bankrupt, named Saul, under the following circumstances. It appeared that the bankrupt came up for his last examination on the 10th February, 1848, and having been unable to satisfy the commissioner as to certain property transferred to his relations, his examination was adjourned sine die. In the month of June last, Saul was arrested by a judgment creditor, who had not proved under the fiat, and who still detained him in prison. On the 3rd of August last, the bankrupt came before the commissioner with amended accounts, and was allowed to pass his examination, the question as to his conduct in respect of the transfer of the property already alluded to, having been reserved for the certificate meeting, which was fixed for the 4th Nov. next; and on this occasion, the bankrupt obtained the usual order for protection until the day appointed for the certificate meeting. It was now submitted, that the protection granted on 3rd August, having been rendered inoperative by the circumstance that the bankrupt was previously taken in execution, the commissioner had authority to order his liberation, and would exercise it where an individual creditor incarcerated the bankrupt. In opposition to the application, it was contended, that the

commissioner had no power to order the bankrupt's discharge, and that if such a power existed, it was discretionary, and ought not to be exercised in favour of a bankrupt, who had grossly misconducted himself as a trader.

Mr. Commissioner Holroyd was clearly of opinion that he had no power to order the bankrupt's discharge in this case. The statute 11 & 12 Vict. c. 86, was applicable to two classes of bankrupts. The first section contemplated the case of a bankrupt who was in prison at the time the fiat issued. It was deemed expedient that such bankrupt, upon his surrender, should be relieved from imprisonment, in order that he might give his assistance to his creditors in making out his accounts and winding up his affairs. The first section, therefore, provided, that where a bankrupt surrendered to his fiat and obtained protection, if such person should be in prison "at the time of his obtaining such protection," the Commissioner may order his release. The second class of bankrupts contemplated by the act were those whose last examinations had been adjourned sine die, or whose certificates should be suspended or refused. These bankrupts might be relieved under the second section of the act, as soon as the Commissioner considered that the bankrupt had been sufficiently punished by imprisonment for his misconduct as a trader. The present applicant (Saul) did not fall within either of the classes contemplated by the statute: he was not in prison at the time of his surrender, and he did not now apply to the Court because his last examination was adjourned sine die, and he had been sufficiently punished by imprisonment. There was no power, therefore, to order his immediate release; but the power granted to a Commissioner under the second section was discretionary, and if such a power existed, the present was not a case in which it could be properly exercised, until the bankrupt's conduct had been fully considered, for which an opportunity would arise when he came before the Court for his certificate.

Application refused.

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

## Courts of Common Law.

## PRACTICE.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Attorneys, pp. 18, 254.

Law of Costs, p. 234.

Law of Wills, p. 37.

Law of Arbitration, p. 315.

Law of Railways, p. 475.

## Courts of Equity.

Construction of Statutes, p. 58.

Law of Property and Conveyancing, p. 75.

Principles of Equity, p. 103.

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Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.  
 Construction of Statutes, pp. 332, 351.  
 Law of Property and Conveyancing, p. 370.  
 Principles of the Common Law and Grounds  
 of Action, pp. 393, 411.  
 Pleadings, p. 430, 451.]

## AFFIDAVIT.

1. *Holding to bail*.—An affidavit to hold to bail, which states that the defendant, "before and at the time of the commencement of this suit was, and still is, justly and truly indebted to the deponent in 100*l.* for work done, and materials for the same provided, and goods manufactured and made by the deponent for the defendant, and at his request," is bad. *Pontifex v. De Maltzoff*, 1 Exch. R. 436.

2. *Filing*.—Where a rule *nisi* has been granted, one of the terms of which is, that affidavits in answer shall be filed before a certain day, the Court will, upon reasonable ground being shown, extend the time within which the affidavits must be filed. *Rey. v. Keen*, 4 D. & L. 622.

3. *Entitling*.—A writ of summons was sued out against a defendant by the name of "H. G.," his real name being "J. G." An appearance was entered by a person describing himself as "H. G." On a motion by the plaintiff, whose name was B., to set aside the appearance so entered, the Court held the affidavit to be properly entitled "B. against J. G., sued by the name of H. G." *Betcher v. Goodered*, 4 D. & L. 814.

4. *Description of deponent*.—*Jurat*.—An affidavit will be rejected which does not contain the proper addresses of all the deponents. Where a rule has been obtained on an affidavit, the jurat of which is defective in not containing the names of the respective deponents sworn, pursuant to the rules of this Court, Mich., 37 G. 3, and Trin., 1 G. 4, the Court will discharge the rule *with costs*. *Cobbett v. Oldfield*, 16 M. & W. 469.

Case cited in the judgment: *Blackwell v. Allen*, 7 M. & W. 146.

5. *Jurat*.—*Waiver*.—If in the jurat of an affidavit accompanying a plea in abatement sworn before a commissioner, the words "sworn before me" be omitted, and the plaintiff take further proceedings, he thereby waives his right to judgment as for want of a plea. *Graham v. Ingoldby*, 35 L. O. 330.

6. *Jurat*.—When an affidavit is sworn by more than one deponent, the name of each deponent must be inserted in the jurat. *Harrison v. Thompson and Bryant*, 35 L. O. 298.

7. *Sworn abroad*.—*Defective jurat*.—The rule of Court of Michaelmas Term, 37 Geo. 3, as to the form of the jurat in affidavits, applies to affidavits sworn abroad. Where therefore there appeared in the jurat of affidavits sworn at Calcutta, an interlineation, and the omission of the names of the deponents (there being more than one,) the Court would not allow

them to be received and filed. *In re Hannah Jane Page*, 35 L. O. 346.

See *Amendment*, 1; *Bail*.

## AMENDMENT.

1. *Affidavit*.—In the writ and declaration, a cause was described as "T. v. S. & H." The defendants appeared under that title, and pleaded to the declaration: *Held*, on motion to set aside a judgment signed for want of a rejoinder, that the affidavit, on which the rule to set aside the judgment was obtained, was incorrectly entitled "T. v. S. & P. sued as H.;" and the Court refused to allow the affidavit to be re-sworn, or to post-date the rule. *Tagg v. Simmonds*, 4 D. & L. 582.

2. *Statute of Limitations*.—In order to save the Statute of Limitations, the Court amended a writ of summons, by describing the plaintiffs as assignees of a bankrupt, and the defendants as the registered officers of a banking co-partnership. *Christie v. Bell*, 4 D. & L. 690.

## APPEARANCE.

The Court will not allow an appearance to be entered for a corporate company upon affidavit that the writ was served on a clerk at the office of the company, and that it had come to the knowledge of the secretary. *Walton v. Universal Salvage Company*, 4 D. & L. 558.

## ARREST.

1. *Member of parliament*.—The privilege of a member of parliament from arrest on a *ca. sa.* exists for 40 days before and 40 days after a meeting of parliament. The rule of privilege is the same in the case of a dissolution as in that of a prorogation. *Goudy v. Duncombe*, 1 Exch. R. 430.

Case cited in the judgment: *Earl of Athol v. Earl of Derby*, 2 Lev. 72.

2. *Privilege*.—The "Somerset Herald" is one of the Queen's servants in ordinary with fee, and therefore privileged from arrest. *Dyer v. Disney*, 4 D. & L. 698.

3. *Sunday*.—A person may be arrested on a Sunday for any *indictable offence*. *Rawlins v. Ellis*, 16 M. & W. 172.

## AUDITA QUERELA.

In an *audita querela*, the Court granted a rule absolute for a supersedeas, together with a *venire facias*. *Giles v. Hutt*, 1 Exch. R. 59; S. C. 5 D. & L. 115.

## BAIL.

*Appeal to Court*.—*Affidavits*.—It is allowable, under 1 & 2 Vict. c. 110, ss. 3 and 6, where the defendant appeals to the Court against an order to hold to bail, to use affidavits in denial of the plaintiff's cause of action. But the Court will not interfere unless it plainly appear that the plaintiff has no cause of action against the defendant. *Pegler v. Hislop*, 1 Exch. R. 437.

See *Affidavit*, 1.

## COGNOVIT.

*Judgment*.—*Term's notice*.—A plaintiff may



enter up judgment on a cognovit given before appearance, and upon which no step has been taken for more than a year, without first giving a term's notice, or obtaining leave of the Court or a judge. *Thompson v. Langridge*, 1 Exch. R. 351.

## DISTRINGAS.

For a distringas to compel an appearance, it is sufficient if it appear that the calls were made at the defendant's place of business, if his residence is unknown. *Burker v. Cox*, 1 Exch. R. 153.

## DE INJURIA.

*Tippling Act.*—*De injuriá* is a good replication to a plea under the Tippling Act, 24 G. 2, c. 40, s. 12. *Lansdale v. Clarke*, 5 D. & L. 95.

Case cited in the judgment: *Cowper v. Garbett*, 13 M. & W. 33; 1 D. & L. 969.

## EJECTMENT.

1. *Husband against wife.*—The nominal plaintiff in ejectment may recover against a married woman who has entered into the common covenant rule, though it appears on the trial that the lessor of the plaintiff is, and was at the time of the demise laid in the declaration, the defendant's husband. *Doe d. Merigan v. Daly*, 8 Q. B. 934.

2. *Service—Attorney.*—The Court requires the same strictness of service of a declaration in ejectment, where the tenant in possession is an attorney, as in the case of any ordinary tenant. *Doe d. Fowler v. Roe*, 4 D. & L. 639.

## ELEGIT.

A writ of elegit cannot be sued out for part of the sum recovered by a judgment, unless it shows on the face of it that the residue of the judgment has been satisfied or otherwise disposed of. *Sherwood v. Clark*, 15 M. & W. 764.

Case cited in the judgment: *Webber v. Hutchins*, 8 M. & W. 319.

## ERROR.

1. *Writ.*—A plaintiff having obtained a verdict, subject to a special case, (with liberty to turn the same into a special verdict,) had judgment on the special case. The defendants then brought a writ of error in the Exchequer Chamber, after which, on the 12th of August, 1845, the plaintiff died. In Dec., 1845, the judgment below was affirmed. The defendants then brought a writ of error in the House of Lords, and assigned errors thereon, and on the 6th of March, 1846, petitioned the House of Lords that the executor of the deceased plaintiff might be made a party to the writ of error. On the 11th of May, the Lords ordered the record to be remitted to the Court of Exchequer. On the 24th of August, the defendants again petitioned the House of Lords that the executor might be made a party to the judgment, but no order was made thereon. On the 10th of November, the executor sued out a *sci. fa. quare executionem non*. The Court re-

used to stay the judgment, but ordered a stay of execution for six weeks, to enable the defendants to sue out a writ of error in the House of Lords. *Riddle v. Grantham Canal Company*, D. & L. 555.

2. *Inferior Court.*—*Payment into Court.*—On writ of error on a judgment in an inferior Court, where the execution has been levied before the allowance of the writ, but not paid over till after, this Court has no power to order the sum levied to be paid into Court, to abide the result of the writ of error. *Spencer v. Haggiadur*, 5 D. & L. 66.

3. *Inferior Court.*—*Irregularity.*—A writ of error was directed to *M. T. B.*, Esq., "Recorder of the Court of Record of and for the borough of K." The return was made by *M. T. B.*, Esq., "Judge of the Court of Record of the borough of K." It appeared that the Court of Record of the borough of K. was an ancient Court of Record, and that the recorder acted as judge, under the 5 & 6 W. 4, c. 76, s. 118. On motion to quash the writ of error for irregularity, the Court allowed the plaintiffs to amend the writ of error by inserting the word "Judge" instead of "Recorder." *Spencer v. Haggiadur*, 5 D. & L. 68.

4. *Inferior Court.*—*Amendment of verdict.*—Where the declaration contained two counts, one of which was bad, and the verdict in the Court below was taken generally for the plaintiffs: *Held*, that this Court had no power, after error brought, to amend the verdict by confining it to the sufficient count. *Spencer v. Haggiadur*, 5 D. & L. 68.

## EXECUTION.

*Effect of Reg. Gen. Trin. 4 Vict.*—Since the General Rule, Trin., 4 Vict., when a judge certifies, under stat. 1 W. 4, c. 7, s. 2, for immediate execution, the plaintiff may sign judgment and take out execution, not only without a four day rule, but without delay. *Alexander v. Williams*, 8 Q. B. 931.

## HABEAS CORPUS.

*Custody of infant.*—*Power of attorney by parent abroad.*—A return having been made to a *habeas corpus* to bring a child of nine years of age into this Court in order that it might be delivered over to the care of certain parties named in a power of attorney executed by the mother of the infant who was residing in India, and it appearing that the child was in the custody of certain guardians appointed by its grandmother, who had left it certain property, and whom the mother had corresponded with, and to whom she had expressed her satisfaction at the way in which the child was treated, and it not appearing that the mother had expressed, or that there was reason for any dissatisfaction at the way in which the child was brought up, this Court refused to make any order to change the custody of the infant. *Esparte Edward B. G. Preston*, 35 L. O. 174.

## INFANT.

*Appearing by guardian.*—An infant was admitted to sue by her father and next friend, on

a petition signed for her by the father, and on affidavit verifying the signature and stating that the infant was only 21 months old, and unable to write or make her mark. *Eades v. Booth*, 8 Q. B. 718.

## INSPECTION.

*Bank books.—Transfer of stock.*—Plaintiff, having been a holder of 3½ per cent. stock, brought an action against the Bank of England for refusing to pay the dividends. The defendants pleaded, denying that plaintiff was the proprietor of the stock in manner and form, &c.: and their defence in fact was, that before the dividends became due, the stock had been transferred out of plaintiff's name. Issue being joined, and notice of trial given, the Court, on motion, made an order that the plaintiff should be at liberty to inspect that particular entry in the transfer book at the bank, which related to the transfer of the stock in question, but not any other part of the bank books. *Foster v. Bank of England*, 8 Q. B. 689.

## IRREGULARITY.

1. *Warrant of attorney.—Judgment.*—A warrant of attorney, dated the 25th of May, 1842, authorized certain attorneys to appear as "of Easter Term last past, Trinity Term now next, or any other subsequent term," and then and there "to receive a declaration at the suit of," &c., "and thereupon to confess the said action or to suffer judgment by *nil dicit* or otherwise," &c. On the 27th of Nov. 1846, a judge's order was obtained for leave to sign judgment, and judgment was accordingly signed on the following day: *Held*, that the judgment was regularly signed in pursuance of the authority by warrant of attorney; notwithstanding the Reg. Gen. Hil. T. 4 W. 4, pt. ii. r. 3, requiring all judgments to be "entered up of record of the day and month, whether in term or vacation, when signed." *Alcock v. Sutcliffe*, 4 D. & L. 612.

2. *Judgment.*—On the 1st of Dec. 1846, the defendant's goods were seized and sold under a *fi. fa.* issued on a judgment. On the 5th of Dec., a fiat issued against the defendant; on the 11th, an official assignee was appointed, and on the 4th of Jan., a creditor's assignee. On the 11th of Jan., the 1st day of Hilary Term, a rule was moved for to set aside the judgment and execution: *Held*, that at most it was only an irregularity that was complained of, and that the application was made too late. *Alcock v. Sutcliffe*, 4 D. & L. 612.

3. *Want of service.*—A rule to set aside the declaration and judgment signed thereon, and all subsequent proceedings, and to discharge the defendant out of custody, on the ground that the defendant has never been served with process in the action, must ask to set aside the appearance also; unless it appear upon affidavit that no appearance has in fact been entered.

A party moving to set aside proceedings on the ground of irregularity, must ask to set aside the 1st proceeding, in which the irregularity occurs. *Hardwick v. Wardle*, 4 D. & L. 739.

4. *Nullity.*—An order by a judge at cham-

bers to set aside a verdict in a case tried before a sheriff is an irregularity not a nullity, and therefore an application to discharge it, made after an interval of two terms is too late. *Orgill v. Bell*, 35 L. O. 267.

## JUDGE'S JURISDICTION.

1. Where a statute in general terms, and without any special limitation, either express or to be inferred from its terms, gives any power to one of the Superior Courts, that power may be exercised by a judge at chambers as the delegate of the Court. *Smeeton v. Collier*, 1 Exch. R. 457.

2. A judge's order to set aside an appearance is of no avail until served on the opposite party, although the clerk of appearance has struck out the appearance in pursuance of that order. *Belcher v. Goodered*, 4 D. & L. 814.

3. Where a judge at chambers had dismissed a summons to strike out a count, the Court will not interfere. *Slack v. Clifton*, 8 Q. B. 524.

## JUDGMENT.

1. *Nunc pro tunc.*—On an application to enter judgment *nunc pro tunc*, it appeared that the cause was tried in Dec., 1845, and that the plaintiff tendered a bill of exceptions. It was settled and sealed in May, 1846, and the postea delivered to the defendants on the 3rd of June, 1846. Negotiations were pending between the parties as to the form in which the judgment should be entered, down to the 27th of October following, when one of the defendants died: *Held*, that as the delay in signing judgment was not the delay of the Court, the rule could not be granted. *Fishmongers' Company v. Robertson*, 4 D. & L. 656.

2. *Term's notice.*—Where a verdict has been pronounced, and more than four Terms are allowed to elapse before judgment is signed, it is not necessary to give a Term's notice before the latter step is taken. *Newton v. Boodle*, 4 D. & L. 664.

Case cited in the judgment: *May v. Wooding*, 3 M. & S. 500.

3. *Judge's order on allocatur for costs.*—A judge's order under 6 & 7 Vict. c. 73, s. 43, for entering up judgment for the amount of the Master's allocatur, has the same force as a rule of Court under the 1 & 2 Vict. c. 110.

Therefore, it is unnecessary to sue out a writ and declaration by way of foundation for the judgment. *Griffiths v. Hughes*, 4 D. & L. 719.

## JUDGMENT OF NON PROS.

1. After leave given to amend the declaration upon payment of costs, the defendant did not serve a rule to plead several matters, or produce to the Master the draft pleas as meant to be amended, with 6s. 8d. costs for amendment. The plaintiff replied to the old pleas, and made up and delivered the issue, with notice of trial, though the defendant was under terms to rejoin gratis. The delivery of the issue was set aside: but *held* that, as no production of the intended new pleas took place on taxing the costs of amendment, the defend-

ant had no right to sign judgment of *non pros*. *Bleasworth v. Dawes*, 16 M. & W. 440.

2. *When it may be signed.*—The defendant obtained an order for particulars of the plaintiff's demand before declaration, with a stay of proceedings until delivery; and when two terms had elapsed without any delivery, he obtained an order to rescind his former order, and demanded a declaration, and after four days signed judgment of *non pros*. On a motion to set aside such judgment for irregularity: *Held*, that the judgment was regular. *Johns v. Sanders*, 35 L. O. 13.

#### JUDGMENT AS IN CASE OF NONSUIT.

1. Where a town cause is made a remanet from one sitting to another, and there is afterwards a default in proceeding to trial, the defendant may move for judgment as in case of a nonsuit. *Laves v. Batt*, 4 D. & L. 559.

2. A creditor's assignee, without the consent or knowledge of the official assignee, commenced an action in their joint names for the recovery of a debt due to the bankrupt. As soon as the official assignee was aware of it, he applied for and obtained a rule staying proceedings until security was given him for costs. The defendant was no party to that rule, but it was served upon him: *Held*, that the rule only restrained a *voluntary* proceeding by the *plaintiffs*; and that the defendant might, notwithstanding, move for judgment as in case of a nonsuit. *Laves v. Bott*, 4 D. & L. 559.

Case cited in the judgment: *Whitehead v. Hughes*, 2 C. & M. 319.

3. Where a plaintiff had proceeded to trial on a defective notice of trial, and obtained a verdict, and the proceedings were afterwards set aside at the instance of the defendant, on the ground of the defect in the notice, but the latter afterwards obtained a rule for judgment as in case of a nonsuit, for not proceeding to trial pursuant to the notice, the Court discharged that rule, with costs. *Larker v. Cerrito*, 4 D. & L. 672.

4. *Peremptory undertaking.*—Where a rule for judgment as in case of a nonsuit has been discharged upon the plaintiff's giving a peremptory undertaking, and the plaintiff never draws up the rule or fulfils his undertaking, it is not necessary in the Queen's Bench Court, in order to entitle the defendant to judgment absolute as in case of a nonsuit, that he should draw up and serve the rule within the time limited by the peremptory undertaking. *Landells v. Ball*, 5 D. & L. 62.

5. An action of debt was brought in the joint names of the official and trade assignees of a bankrupt, but without the knowledge or consent of the former; who, as soon as he was made acquainted with it, obtained a rule against his co-plaintiff, to stay the proceedings until he gave security for the costs. The rule was made absolute, and served on the defendant in the action. The cause had stood for trial at the sittings in the same term, but had been made a remanet to the sittings after term on the ap-

plication of the defendant, on the ground of the absence of a material witness. At the latter sittings the record was withdrawn: *Held*, that the defendant was entitled to move for judgment as in case of a nonsuit.

The Court will discharge a rule for judgment in case of a nonsuit, on a peremptory undertaking to try, given by one of the plaintiffs, though the other protests against it. *Laws v. Bott*, 16 M. & W. 362.

6. Judgment as in case of a nonsuit may be moved for by one of several defendants, though the other defendants have moved for costs of the day for not proceeding to trial. *Bridgford v. Wiseman*, 16 M. & W. 439.

7. Where in an action of trespass on the case one of two defendants suffers judgment by default, the other defendant is still entitled to judgment as in the case of a nonsuit for not proceeding to trial. *Hadrick v. Helson and another*, 34 L. O. 383.

8. Where, in the Court of Queen's Bench, a rule for judgment as in case of a nonsuit has been discharged on a peremptory undertaking, it is incumbent on the plaintiff to draw up the rule and take notice of the condition upon which the rule which would otherwise have been made absolute was discharged. Where, therefore, a rule for judgment as in case of a nonsuit was discharged on a peremptory undertaking to try, and the plaintiff did not go to trial pursuant to his undertaking, upon which the defendant obtained a rule for judgment as in case of a nonsuit and signed judgment, the Court refused to set aside the judgment on the application of the plaintiff, on the ground that he had not been served with a copy of the rule discharging the rule for judgment as in case of a nonsuit on the peremptory undertaking in time to give notice of trial in time to comply with the undertaking. *Seemle*, that the practice has been different in the Court of Common Pleas. *Landells v. Ball*, 35 L. O. 37.

9. *Death before issue joined*—*Entering suggestion.*—Where two out of four defendants had died before issue was joined in the action between them and the plaintiff, the other two surviving defendants, with whom issue has been joined, cannot have a judgment as in case of a nonsuit, without a suggestion first appearing in some way on the roll of the proceedings of the death of the two co-defendants. *Pinkhurst v. Sturch and three other defendants*, 35 L. O. 371.

#### JUDGMENT ON A SCIRE FACIAS.

*Application at chambers in Term time.*—Where, as in the instance of entering up judgment on a *scire facias*, an application can be made in Term time to a judge at chambers, the Court will not entertain a motion for the same purpose, in the absence of special circumstances. *Edwards v. Cox*, 35 L. O. 371.

#### JURAT.

See *Affidavit*, 4, 5, 6, 7.

[The remainder of this Section will be given in our next number.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, OCTOBER 21, 1848.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## CONSEQUENCES OF CONVICTION FOR HIGH TREASON.

PROSECUTIONS for the crime of High Treason have of late years happily been so unfrequent in this kingdom, that when a conviction occurs in a case distinguished by any peculiarity of circumstance, lawyers, as well as laymen, may be excused for speculating upon the consequences, and suggesting doubts, before the occasion for them has actually arisen.

In referring to the recent convictions for High Treason in Ireland, it can hardly be necessary to disclaim any feeling of sympathy with offenders who have openly defied and derided the law, and justly subjected themselves to its severest punishment. We participate, however, in the prevalent anticipation, that those responsible for the due execution of the law may not consider it inconsistent with a sense of public duty to advise the interposition of the prerogative of mercy, as regards the lives of the misguided men criminally concerned in the recent outbreak. The intense absurdity of the whole proceeding—the utter inadequacy of the means as compared with the end—and the ridiculous light in which those who assumed the most prominent positions placed themselves, gives a character of burlesque to the transaction which—despite the wickedness of intention—renders the infliction of capital punishment in some degree inappropriate.<sup>a</sup> The example is not

likely to provoke imitation, except it may be amongst turbulent schoolboys, and in such a case there is little ground for apprehension that the future peace of society will be seriously perilled by the exercise of royal clemency. We venture to assume, therefore, as if it were *un fait accompli*, that her Majesty will be pleased to grant a conditional pardon to Mr. O'Brien and the other persons convicted of High Treason at the Special Commission at Clonmel. The effect of such pardon, no doubt, will be to dispense with all that is peculiar to the judgment for High Treason, a conviction for which, as our readers are aware, not only involves the loss of life under circumstances of extreme severity and rigour, but also imports the forfeiture of inheritance by working corruption of blood.

The sentence passed on persons convicted of High Treason was altered, and is now regulated by, the stat. 54 Geo. 3, c. 146. Previous to the passing of that act, the sentence was even more horrible than it now is, though, as a matter of royal grace, and at the prayer of the convict or his friends, part of the judgment was constantly remitted. The act just mentioned recites the form of the sentence theretofore passed on persons convicted of High Treason, which was, that they should be drawn on a hurdle to the place of execution,

O'Brien and his crack-brained associates in mind when he wrote:—

“ To die for treason is a common evil,  
But to be hanged for folly is the d—! ”

C C

<sup>a</sup> Dryden may have had such as Mr. Smith  
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and there be hanged by the neck, but not until they were dead, but that they should be taken down again, and that when they were yet alive their bowels should be taken out and burnt before their faces, and that afterwards their heads should be severed from their bodies, and their bodies be divided into four quarters, and their heads and quarters to be at the King's disposal. The 54 Geo. 3, c. 146, passed on the 27th July, 1814, and it was enacted that, after the passing of that act, the sentence should be passed upon any person convicted of High Treason—

“That such person shall be drawn on a hurdle to the place of execution, and there be hanged by the neck until such person be dead, and that afterwards the head shall be severed from the body of such person, and the body, divided into four quarters, shall be disposed of as his Majesty and his successors shall think fit.”

Before this alteration in the terms of the sentence, it appears to have been doubted,<sup>b</sup> whether the Crown by its warrant could direct the execution to vary from the judgment. It was therefore enacted, by 54 Geo. 3, c. 146, s. 2,—

“That his Majesty or his successors, after such judgment shall be pronounced or awarded, may, by warrant under his or their sign manual, countersigned by one of his Majesty's principal Secretaries of State, declare it to be his or their will and pleasure, and may direct and order, that such person shall not be drawn, but shall be taken in such manner as in the said warrant shall be expressed, to the place of execution, and that such person shall not be there hanged by the neck, but that instead thereof, the head shall be there severed from the body of such person whilst alive; and in such warrant may direct and order how and in what manner the body, head, and quarters of such person shall be disposed of, and it shall be lawful for the sheriff or other person or persons to whom such warrant shall be addressed, and whom it shall concern, to carry the same into execution accordingly.

As to the forfeiture of property incurred by a judgment for High Treason, it is sufficient to state that, by 5 & 6 Ed. 6, c. 11, s. 9, confirming 25 Ed. 3, st. 5, c. 2, every offender convicted of High Treason, by presentment, confession, verdict, or process of outlawry, shall forfeit to his Majesty all such lands, &c., as he has in his own use and possession in his Majesty's dominions.

The condition under which pardon may

be granted to the persons recently convicted of High Treason in Ireland, is of course altogether matter of conjecture, but it has been suggested as involving some doubt, whether, in the event of a pardon on condition of transportation to any of the penal settlements, the Crown could enforce the condition, unless with the assent, express or implied, of the convict. Folly or madness may induce a convicted traitor whose ruling passion is notoriety, to say, “I will be hanged, and nobody shall save me.” The question is, could such a person successfully resist the commutation of sentence to transportation?

It must be remembered that transportation is a species of punishment unknown to the Common Law, and inflicted only under legislative enactments.<sup>c</sup> The 5 Geo. 4, c. 84, regulates the transportation of offenders from Great Britain, and the 2nd section enacts, that whenever his Majesty shall be pleased to extend mercy to any offender convicted of any crime for which he is excluded from the benefit of clergy, upon condition of transportation beyond seas, either for life or any number of years, and such intention shall be signified by one of the Secretaries of State to the Court before which such offender shall be convicted, such Court shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate transportation of such offender, and every such order for the transportation of any offender whose sentence of death shall be remitted by his Majesty, shall subject the offender to be conveyed beyond the seas under the provisions of this act. Upon a conviction in Great Britain, followed by a pardon on condition of transportation, it seems to be quite clear, therefore, that the mitigated sentence might be lawfully carried out, although the convict should be ever so much opposed to the merciful arrangement.

The first question then seems to be, is there any statute containing a provision similar to that just cited from the 5 Geo. 4, in operation in Ireland? If there be no such statute, we must fall back upon Common Law principles. Lord Coke says,<sup>d</sup> that a warrant from the Crown for an execution *totally varying from the judgment* is illegal, because the King cannot alter the judgment, though he may by his prerogative *remit* one part and leave the offender

<sup>c</sup> The earliest act imposing the punishment of transportation is 39 Eliz. c. 4, s. 6; 5 Ev. Col. Stat. p. 352.

<sup>d</sup> 3 Inst. 52; 211.

<sup>b</sup> See 1 Hale, 501; 2 ib. 411; Fost. C. L. 267.

open to the other; but Sir Michael Foster,<sup>e</sup> when commenting on this passage, observes:—"This matter seemeth to lie in a very narrow compass. The King cannot by his prerogative vary the execution so as to *aggravate* the punishment beyond the intention of the law. Thus far the rule that the King cannot alter the judgment is true. But it doth not follow from thence that he who undoubtedly can wholly pardon the offender cannot mitigate his punishment with regard to the pain or infamy of it. Will it be said, that because the Crown cannot go beyond the letter of the law in point of rigour, its mercy is likewise so bounded? by no means. For the law proceedeth in both cases with a perfect uniformity of sentiment and motive. The benignity of the law hath set bounds to the prerogative in one case, and the same benignity hath left it free and unconfined in the other." Those who take an interest in this question will judge what weight this reasoning is entitled to, and how far it is applicable to the case which suggested the consideration.

Another and a different question has been mooted, incidental to the case of Mr O'Brien. He is at present member for the county of Limerick, and the point raised is, how far his seat is affected by a conviction for High Treason. It is laid down in all the Treatises on Election Law, that a man attainted for treason or felony cannot be elected. In the 4th Inst. p. 47, the reason is thus given:—"Concerning the election of two knights, the words of the writ be—*Duos milites gladiis cinctos magis idoneos, et discretos eligi fac*; and for the election of citizens and burgesses the words of the writ be—*Duos, &c., de discretionibus et magis sufficientibus*, which they cannot be said to be when they are attainted of treason or felony." But all this refers to the disqualification of candidates, and not to the deprivation of members duly elected. Probably no authority can be found in the annals of Parliament, to justify the assertion that a conviction, even for High Treason, operates *ipso facto* so as to produce a vacancy. If this were the effect, it would be the duty of the Speaker to issue a new writ, upon a notification of the fact, in the same manner as when the death of a member is certified. It has been said, indeed, that a person attainted of treason is *civiliter mortuus*, but such a doctrine could not be maintained in the present day. Such

a person, so long as he lives, is under the protection of the law; to kill him without warrant of law would be murder, and whilst he lives his creditors have an interest in his person for securing their debts.<sup>f</sup> We apprehend, therefore, that if a member of parliament convicted of High Treason, obtained a pardon conditioned upon his transportation, the fact that the substituted punishment was enforced would not vacate the seat. It is in the discretion of the House, however, at all times to expel persons who are deemed unworthy to sit as members, and this power of expulsion has been exercised even where no legal conviction has taken place,<sup>g</sup> but where members have been considered guilty of fraudulent or discreditable conduct. No inherent disqualification is created by expulsion, but it is usually followed by a declaration of incapacity to sit again in the same parliament. It seems to be tolerably clear, upon a review of the parliamentary authorities, that for whatever crime a member may be removed—even in the case of a felon convict—the new writ cannot issue until after the judgment of removal is pronounced by the House.<sup>h</sup> If Mr. O'Brien's life be spared, therefore, and he does not think fit voluntarily to resign, it may probably be deemed necessary to submit a resolution for his expulsion shortly after the commencement of the next Session of Parliament.

#### SUGGESTION TO DEPRIVE PLAINTIFF OF COSTS UNDER THE COUNTY COURTS' ACT.

In considering the provisions of the New County Courts' Act, 9 & 10 Vict. c. 95, we have already had occasion to remark that, although the 129th section enacts, that if an action be brought in the Superior Courts for any cause, other than those in which the Superior Courts have concurrent jurisdiction, and a verdict be found for the plaintiff for less than 20*l.*, in contract, or 5*l.* in tort, the plaintiff shall have judgment to recover such sum only, and no costs, unless the judge who tries the cause certifies, &c. Yet, the act contains no provision pointing out the course to be pursued, where the plaintiff, in defiance of this

<sup>e</sup> See *Macdonald vs. Ramsay*, Fost. C. L. p. 61.

<sup>f</sup> See the *Wootton Bassett* case, Male, 44.

<sup>h</sup> Male on Election Law, 46; Wordsworth, E. L. 82.

<sup>g</sup> See Discourse on Homicide, c. 2, p. 269.

enactment, proceeds in one of the Superior Courts, and recovers a less sum than is specified. The applications to the Superior Courts to deprive the plaintiff of costs, on the ground that he ought to have sued in the County Court, constitute a new branch of practice, upon which several cases have already been decided, to some of which it is now considered expedient to direct attention.

As in all cases where one party seeks to deprive another of an acknowledged right, the Courts have held, that the onus of proving that the plaintiff who has sued in the Superior Courts ought to be deprived of the costs which he would have been entitled to in the ordinary course upon the successful termination of his suit, lies upon the defendant. It was also determined, very shortly after the act came into operation, that the proper course for a defendant to pursue, who contended that the plaintiff ought to be deprived of costs, was, to apply to the Court to enter a suggestion upon the record. In general, the record is in the custody of the successful plaintiff, and therefore it is necessary, as a preliminary step, to move that the record be brought in to enable the defendant to enter a suggestion. In order to induce the Court to grant his application, the defendant must show reasonable grounds for it, and furnish the Court with information upon affidavit of the facts to be suggested on the record. Hence the various cases which have arisen,\* as to the sufficiency of the affidavits, upon moving to enter a suggestion. In order to deprive a plaintiff of his costs, it is not sufficient to show that the action tried in the Superior Court was one which might have been determined in the County Court. It is imperative on the defendant to show that it was incumbent on the plaintiff to have sued there, and not in the Superior Court. (Vide *Bailey v. Robson*, ante, p. 168.) The 9 & 10 Vict. c. 95, s. 128, provides, that the Superior Courts shall have a concurrent jurisdiction with the County Courts in certain cases, viz:— “Where the plaintiff dwells more than 20 miles from the defendant,—or where the cause of action did not arise wholly, or in some material part, within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought,—or where any officer of the County Court shall be a party, (except in respect of any claim to any goods or chattels taken in execution of the process of the Court, or the proceeds or value thereof.”) In all these cases, even when the

cause of action is within the jurisdiction of the County Court, the plaintiff may, at his discretion, sue in the Superior Courts, and is not therefore liable to be deprived of costs. In certain other cases the County Court has no jurisdiction. Sect. 58, of the County Court Act, which gives the New Courts jurisdiction in all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, expressly provides, that these Courts “shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments,—or to any toll, fair, market, or franchise, shall be in question,—or in which the validity of any devise, bequest, or limitation, under any will or settlement, may be disputed,—or for any malicious prosecution,—or for any libel or slander,—or for criminal conversation,—or for seduction,—or breach of promise of marriage.” In the class of cases defined by the 128th sect., the plaintiff may sue either in the County Court or in the Superior Court, without being deprived of costs. In actions of the nature described in the 58th section, the plaintiff would have no remedy in the County Courts. There is a third class of cases, not comprehended in either of the sections alluded to, where an attorney sues as plaintiff in a Superior Court, for a debt recoverable in a County Court, and in this case the Courts have held, that the attorney plaintiff is entitled to his costs as before the passing of the statute 9 & 10 Vict. c. 95. (See *Lewis v. Hance*, ante, p. 68; *Jones v. Brown*, 17 Law Jour. Exch. N. S. 163.) The defendant applying for a suggestion to deprive the plaintiff of costs under the 129th section, it seems is bound, according to the decisions of the Courts, to bring his case within, not only this, but the section immediately preceding. It is not sufficient for the applicant to show by affidavit that the case came within the jurisdiction of the County Court under the 58th section. The affidavit must negative the facts specified in the 128th section, which give a concurrent jurisdiction to the Superior Court. It must show, therefore, that the plaintiff does not dwell more than twenty miles from the defendant,—that no material part of the cause of action arose out of the jurisdiction of the County Court,<sup>1</sup>—and that no party to the

<sup>1</sup> It was observed by Alderson, B., in *Butler v. Corney*, 17 Law Jour. N. S. 265, Exch., that this section was so awkwardly worded it was difficult to determine whether it meant “if no material part of the cause of action arises out



action, is an officer of the County Court. (See *Meetan v. Nicholls*, *ante*, p. 149. It seems, however, that the onus of showing that the action is not one of those excepted from the jurisdiction of the County Courts by the 58th section, lies on the plaintiff; and it has been expressly decided, that the defendant is not bound to negative the circumstance that the plaintiff is an attorney, (See *Butler v. Corney*, 17 Law Jour. N. S. Exch. p. 265.) or to state in his affidavit that the judge who tried the cause did not certify that the cause was proper to be tried in the Superior Court. (See *Nind v. Rhodes*, *ante*, p. 69). The principle of construction on which these decisions would seem to have proceeded is, that the 128th section, defining the cases in which the Superior Courts have a concurrent jurisdiction, is a substantive provision, which must be taken in conjunction with the 129th section, and the defendant is bound to bring his case within both these sections; but the actions excluded from the jurisdiction of the County Courts are exceptions stated under a proviso, and the party relying on the exception must show that his case falls within it. If the answer to the rule for a suggestion therefore be, that the action is not of that nature or description in which the County Courts have jurisdiction, this must appear by affidavits from the plaintiff. The defendant makes a *prima facie* case if he brings himself within the provisions of sections 128 & 129.

Many other questions arising from the enactment depriving a plaintiff of costs, yet remain to be determined by the Courts at Westminster. We are not aware that it has been authoritatively laid down, when the application to enter a suggestion under the County Courts Act must be made. No doubt, it would be convenient that the motion should be made and the rule disposed of before the plaintiff has taxed his costs, but as it has not been usual in practice, for the judges at chambers to grant leave to enter suggestions to deprive of costs, where a cause is tried in vacation and the judge at *Nisi Prius* certifies for speedy execution, it may not always be in the power of a defendant to bring his case before the Court until after the plaintiff issues execution. It has been suggested, and with some reason, that when a defendant suffers judgment by default, the plaintiff can in no case be deprived of his costs, as the 129th section is

only applicable to those cases in which "a verdict shall be found for the plaintiff," &c. If this be so, in order to prevent the plaintiff suing in the Superior Court from recovering his costs, the defendant is compelled to incur the expense of appearing and defending an action which may be legally and morally indefensible. It may be doubted whether this could have been the intention of the legislature, but in this, as in other cases, the Courts will have to determine the question, whenever it arises, upon the language of the statute; and until the various points which are involved in the clauses referred to have been judicially decided, conjectures as to the probable result would be of little or no value.

## LAW OF ATTORNEYS.

### JUDGMENT ON MASTER'S ALLOCATUR.

By the 37th section of the 6 & 7 Vict. c. 73, an attorney's bill of costs may be taxed, as well on his own application, as on that of the person chargeable therewith. By the 43rd section, upon the taxation and settlement of any such bill, the certificate of the taxing officer shall be final and conclusive as to the amount, unless set aside by order of Court; and payment may be enforced according to the course of the Court, and the Court, or any judge thereof, may order judgment to be entered up for such amount with costs, unless the retainer be disputed.

In a case before the Court of Exchequer in Easter Term, 1847, an attorney delivered his bill to his client, the bill was taxed, and the Master's allocatur amounted to 23*l.* 9*s.* 4*d.* The order of a judge was then obtained, empowering the attorney to sign final judgment for the amount. The attorney then issued a writ of summons against the defendant, entered an appearance *sec. stat.* and filed a declaration, on which he entered up judgment. The Master disallowed the costs of the suit, appearance, and declaration, as unnecessary; and a motion was made to review the taxation. It was urged that the attorney, in order to avail himself of the judge's order, must proceed to judgment according to the ordinary practice of the Court; and that unless the proper preliminary steps were taken, there was nothing on which to found the judgment. The Court however held, that the statute intended that the allocatur should operate as a judgment, and that the previous proceedings here instituted were unnecessary. The legislature meant to put an allocatur on the same footing as

of the jurisdiction," or "if any material part arises within it."

a rule of Court under the 1 & 2 Vict. c. 110, provided a judge deemed it right to make an order for final judgment. *Griffith Hughes*, 4 Dowl. & L. 719.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### IN THE LAST SESSION OF PARLIAMENT.

THE Statutes effecting alterations in the Law passed during the *last* Session of Parliament, printed in this and the preceding volume of the *Legal Observer*, are as follow:—

Extending Time for making Railways, 35 L. O. 204.

Regulating the Queen's Prison, *ib.* 555.

North American Passengers, *ib.* 581.

Crown and Government Security, *ib.* 600.

Oaths in Chancery, p. 7, *ante*.

Stamp Duties Assimilation, p. 8, *ante*.

Trial of Controverted Elections, p. 23, *ante*.

Removal of Aliens, p. 182, *ante*.

Annual Indemnity, p. 221, *ante*.

Suspension of the Habeas Corpus Act (Ireland), p. 280, *ante*.

Poor Removal, p. 298, *ante*.

Commons Inclosure, p. 324, *ante*.

Game Certificates, p. 341, *ante*.

Joint-Stock Companies, p. 357.

Law of Elections, p. 377.

Law of Bankruptcy, p. 377.

Administration of Justice by Magistrates out of Sessions, p. 397.

Administration of Criminal Law, p. 403.

Summary Convictions of Magistrates, p. 417.

Release of Bankrupts, p. 423.

Evidence of Proclamations of Fines, p. 424.

The Protection of Justices, p. 437, 442.

Parliamentary Electors Rates, p. 460.

Payment of Debts out of Real Estate, p. 460.

The London (City) Small Debts' Act, 1848, p. 481.

Drainage Certificates, p. 482.

### COMMONS INCLOSURE.

11 & 12 VICT. c. 109.

An Act to authorize the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales. [4th September, 1848.]

1. THIS act recites, that the Inclosure Commissioners for England and Wales have, in pursuance of 8 & 9 Vict. c. 118, since the date of their Third Annual General Report, issued their provisional orders for and concerning the proposed inclosures mentioned in the Schedule to this act, and requisite consents thereto have been given: And that the Commissioners have,

by a special report, certified their opinion that such proposed inclosures would be expedient, but the same cannot be proceeded with without the previous authority of parliament: It is therefore enacted, That the said several proposed inclosures mentioned in the Schedule to this act be proceeded with.

2. Short title of act: "The Second Annual Inclosure Act, 1848."

3. Since the presentation by the Inclosure Commissioners of the said Special Report, the necessary consents to the provisional order have been given in the matter of *Warley* Inclosure in the county of York: And the several parties consenting thereto are desirous that certain agreements already entered into between the lord of the manor of *Wakefield*, of which the township of *Warley* is parcel, and commoners thereof, who have consented to such provisional order, should be carried out with respect to certain matters which unless provided for, it would not be advisable that such inclosure should proceed: It is therefore enacted, That it shall be lawful for the said Commissioners to direct that the said inclosure be proceeded with upon the terms and conditions of such provisional order and of the said agreements, or such of them as the said Commissioners shall think just and reasonable.

### SCHEDULE TO WHICH THIS ACT REFERS.

Ash Moor, Devon.

Cottisford, Oxford.

Kildwick, York.

Winterbourne, Wilts.

Littleton, Middlesex.

Newton Valence, Southampton.

Discoyed Hill, Radnor.

Greatham, Southampton.

Newbiggin Moor, Westmorland.

Harras Moor, Cumberland.

Drinkstone, Suffolk.

South Common, Somerset.

Standlade, Bournemouth, and Hardwick, Oxford.

Hebden Moor, York.

Hodnet Heath, Salop.

Thatcham, Berks.

Germans Week Common, Devon.

## CHANCERY REFORMS.

### CONTINUITY OF PROCEEDINGS IN MASTERS' OFFICES.

MR. SAMUEL MILLER has just published some "Observations on the necessity of Continuous Proceedings in the Offices of the Masters in Chancery, with Remarks on a Pamphlet of Master Farrer, intituled 'Observations on the Offices of the Masters in Chancery.'" Mr. Miller had bestowed much time and attention on the Report of the Law Amendment Society relating to proceedings in the Masters' Offices, to which Master Farrer's observations are di-

rected, and he has therefore offered these remarks, which he accompanies with a well-deserved compliment to the learning and eminent character of the Master.

This subject of the *Continuity of Proceedings* in the Masters' Offices, instead of hourly warrants, is one on which we entertain a very decided opinion in accordance with Mr. Miller, and we shall lay before our readers Mr. Miller's answer to the Master on this important point.

Master Farrer's objection to continuous warrants is, that there would be five Superior Judges and ten Masters sitting with Cause Lists, and that it would be difficult, if not impracticable, to carry the plan into effect, and the difficulty would be much increased by the Courts sitting at Westminster. To this Mr. Miller thus answers:—

"Now these difficulties, it is submitted, will be found on consideration not of such moment as to prevent the adoption of a plan admitted on all hands to be most beneficial, and particularly when it is considered that the principal grounds of the objections suggested by the Master are likely to be removed; for there cannot be a doubt that six Masters could with ease, by continuity of proceeding, dispose of more business than is now done by ten, and a Committee of the House of Commons has already recommended that the present number of Masters shall be reduced. The inconvenience arising from the Courts sitting at Westminster during the terms might also be speedily remedied by fixing the sittings always in Lincoln's Inn, a course which has been long desired by a majority both of the bar and of solicitors.

"Master Farrer seems to consider that the present voluntary system of attendance might still be retained, but that it should be subject to control, to prevent abuse. This proposition, however, is open to the objection, that discretion is always liable to be abused; and it is said, that in times beyond legal memory, when equity was measured by the Chancellor's foot, the suitor obtained a larger or smaller proportion of justice, according to the size of that important member, so would proceedings; if the present voluntary system of attendance were retained, be liable to be continued or delayed, according to the amount of firmness and determination, or kindness and forbearance, possessed by the Master, or according to the conscience of the practitioner, and thus we should be in danger of speedily relapsing into the lax system now complained of. So thought also the late Lord Chancellor of Ireland, Sir Edward Sugden; for that eminent judge, in settling the code of orders for regulating proceedings in the Court of Equity and the Masters' Offices in that country, and to the preparation of which he devoted several months of unremitting labour, expressly provided for

continuity of proceedings in the Masters' Offices. The writer has ascertained that the order for this purpose has worked most satisfactorily to all parties, and without the necessity for any such material changes in the old practice, as seems to be considered by Master Farrer to be necessary for giving due effect to such an order.

"It is far from the writer's wish to suggest alterations that would, if carried out, press inconveniently upon the practitioners of the Court; but he feels assured that, so far from continuity of proceedings producing such a result, it would operate greatly to their relief. In the first instance, two or three offices of very large practice might find it necessary to increase their staff; but the advantages they would derive from the speedy release of their capital now frequently locked up for years in consequence of the tardy mode of proceeding, and the great increase that would take place in Chancery proceedings, would far more than compensate for any inconveniences they might sustain.

"A similar difficulty was started with regard to the junior bar of the Court of Chancery when the additional Vice-Chancellors were appointed. It was said by many, that it would be impossible for juniors in considerable practice to take briefs in all the Equity Courts, and some were actually considering what Courts they should select; but no such selection has been made, and very little inconvenience has arisen. Had, however, this difficulty been ever so well founded, it would have been deemed a very unsatisfactory reason why the public should be deprived of a better administration of justice; and the writer is sure there is not a solicitor who, for the sake of his own convenience, would wish his client to be detained in the Master's Office a year and more, to get through a proceeding that might be disposed of in two days."

Mr. Miller adds, in a note, the following details in support of his views:—

"A statement was made by the late Master Lynch, in his speech in the House of Commons, relative to the Court of Chancery, on the 5th of August, 1840, which has since been published; wherein he says, that in a case before him called "The Bury St. Edmund's Case," where between seventy and eighty separate accounts were directed to be taken, the parties having proceeded for two days, six hours each day, the matter was gone through in the middle of the day; whereas, if it had been proceeded with in the ordinary way of warrants, the taking of the accounts would have occupied a year or more; and he adds: "There is no Master in the building who is not perfectly alive to the advantages of continuity of proceeding, and who, as far as in him lies, does not carry into effect such continuity; but until directed by a higher and competent authority,—until the Master is directed not to proceed with a cause until he finishes the pre-

ceding, he cannot, he ought not to do more than he does at present."

"The Report also, to which the writer has referred, contains several instances to show the value of this mode of proceeding, in one of which (a case of pedigree) it appeared that, according to the usual plan of warrants, a year and a half would have been consumed in completing the inquiries, which, by continuous proceedings, was finished in two days. And even the first case referred to in the Appendix to Master Farrer's "Observations on the Masters' Offices," bears ample testimony to the same effect; for in that case, where exceptions to answers had been taken for insufficiency, the arguments, which might well have been concluded in two days by continuous proceeding, extended over a period of four months, and thus, upon a mere question of pleading the cause was carried over the long vacation, making a period of ten months before the answers could be obtained, whereas if the exceptions had been speedily disposed of, the cause might, without going into evidence, have been heard, and a decree obtained, before the vacation commenced."

#### STAMPS ON COPYHOLD ADMISSIONS.

To the Editor of the Legal Observer.

SIR,—The inconvenience which must arise from having to prepare a formal admission on stamp at the time of admission, may be avoided by substituting an admission at a special Court for one out of Court.

The 86th section of the act (4 & 5 Vict. c. 35) authorizes a lord, steward, or deputy steward, to hold a Court without the attendance of homage, and the admission may thus be effected with as little trouble to the steward as if granted out of Court.

As a choice of forms in the entry of surrender under the act, may not be useless, I send you at foot a copy of the form I have used since the act. I do not refer to the stamp, but such reference could be made if desired. I would however suggest, that if reference be made to the stamp, it would be better to state what stamp is impressed, than to state that the surrender is duly stamped.

R. R.

Manor of } The day of in  
the } the year of our Lord  
pursuant to the statute  
in that case made and provided, is entered on  
on the Court Rolls of this manor, an absolute  
[or conditional] surrender in writing, this day  
taken out of Court as therein expressed, from  
A. B., a copyhold tenant of this manor, and  
which surrender is as follows, (that is to say.)

[add copy of surrender.]

[At foot.] Entered pursuant to the statute  
4 & 5 Vict. c. 35, s. 89.

Steward.

that "it is obviously the intention of the legislature to affix the stamp on the admission with a view to prevent fraud?" and how stamping the admission, which is put into the steward's drawer and never sees light, can prevent fraud, better than the copy which goes forth to the world an evidence of title?

Perhaps he will also oblige me with the form of an entry of the admission, the one furnished as such, being in fact merely an entry of surrender out of Court, forthwith in pursuance of the statute.

A YOUNG STEWARD.

#### LIST OF LOCAL AND PERSONAL ACTS.

11 & 12 VICT.

DECLARED PUBLIC,

AND TO BE JUDICIALLY NOTICED.

1. An Act for better assessing and collecting the Poor Rates, Lighting, Watching, and Highway Rates in the parish of Kettering in the county of Northampton.

2. An Act for enabling the Mayor, Aldermen, and Burgesses of the borough of Leicester to establish a general Cemetery for such borough.

3. An Act for the Consecration of a Portion of the Manchester General Cemetery.

4. An Act for extending the Time for building a Bridge over the river Avon from Clifton to the opposite side of the river in the county of Somerset.

5. An Act to authorize the Company of Proprietors of the Leicester Navigation to abandon the Railways or Stone Roads and Water Levels commonly known as "The Forest Line," and to enable them to sell the Lands over which the same passes, and the Reservoir and other Works connected therewith.

6. An Act for supplying the parish and township or borough of Folkestone with Water.

7. An Act to enable the Company of Proprietors of Lambeth Waterworks to construct additional Works, and for the better supplying the inhabitants of the parish of Lambeth in the county of Surrey and other parishes and places with water.

8. An Act for the better supplying with Water the Royal Burgh of Stirling and suburbs thereof.

9. An Act to enable the Birkenhead Dock Company to sell or lease their Land.

10. An Act, to authorize the Trustees of the Liverpool Docks to build Warehouses, to construct additional Wet Docks and other Works, and for other purposes.

11. An Act for constructing and maintaining a Pier, Jetty, or Stage, with necessary Approaches thereto, at Dover in the county of Kent.

12. An Act for lighting with Gas the township of Morley in the parish of Batley in the West Riding of the county of York.

13. An Act for amending "The Bristol and Clifton Gaslight Act, 1847."

SIR,—Will your correspondent "Civis" be good enough to inform me how he makes out

14. An Act for incorporating the Southampton Gaslight Company, and for supplying at a limited price the town and neighbourhood of Southampton with Gas.
15. An Act to amend and enlarge the Provisions of an Act passed in 9th and 10th years of the reign of her present Majesty, intituled "An Act for better supplying with Gas the city of Worcester and the Suburbs thereof, and to enable the Worcester New Gaslight Company incorporated by the said Act to raise a further Sum of Money."
16. An Act for providing a Market for the Sale of Cattle and other Animals in the borough of Shrewsbury in the county of Salop.
17. An Act to alter, amend, and enlarge the Powers and Provisions of an Act passed in the 9th and 10th years of the reign of his Majesty King George the Third, for establishing and governing the Magdalen Hospital.
18. An Act for the Regulation of certain public Suffrance Wharves in the port of London.
19. An Act to effect an agreement between the Visitors of the Lunatic Asylum for the county of Leicester and the Corporation of the borough of Leicester, for the Admission of Lunatic Paupers from the said borough into the Asylum.
20. An Act for the Incorporation, Establishment, and Regulation of "Price's Patent Candle Company," and for enabling the said Company to purchase and work Letters Patent.
21. An Act to authorize certain Alterations in the Hitchin, Northampton, and Huntingdon Extension of the Midland Railways; and for other purposes.
22. An Act for enabling the North-western Railway Company to make certain alterations and Diversions in the Main Line of their Railways at Skipton, Casterton, and Sedbergh, and in the Lancaster branch of their Railway at Bulk.
23. An Act to authorize the leasing of the Aberdare Railway, with the branch Railway and Works connected therewith, to the Taff Vale Railway Company.
24. An Act for enabling the York, Newcastle, and Berwick Railway Company to improve their Main Line of Railway, and to make certain Branches in the county of Durham; and for other purposes.
25. An Act to empower the North British Railway Company to raise additional Capital for certain purposes.
26. An Act to enable the Kendal and Windermere Railway Company to raise a further Sum of Money, and to amend the act relating to such Railway.
27. An Act for enabling the South Wales Railway Company to hold Shares in the Undertaking of the Vale of Neath Railway Company; and for other purposes.
28. An Act for enabling the Bristol and Exeter Railway Company to purchase the Glastonbury Navigation and Canal, and for amending the acts relating to such Railway and Canal.
29. An Act to amend the acts relating to the Waterford, Wexford, Wicklow, and Dublin Railway, and to enable the South Wales Railway Company to subscribe thereto.
30. An Act to enable the Norfolk Railway Company to raise a further Sum of Money, and for other purposes.
31. An Act for abolishing the Duties now payable under the Act of 7 George the First, commonly called Saint George's Chapel Act, and for otherwise varying the Provisions thereof, and enacting other Duties and Provisions in lieu thereof.
32. An Act to raise a further Sum of Money for the Court House and Offices at Hamilton, and to alter the Mode of assessing and levying certain Rates and Assessments in the county of Lanark.
33. An Act for removing and regulating the Markets and Fairs held in the borough and liberties of Oswestry, and for completing and providing convenient Market Places and Places for Fairs, with proper Approaches thereto.
34. An Act for maintaining and improving the Harbour of Looe in the county of Cornwall, and for taking down the present Bridge between East and West Looe across the said Harbour, and erecting a new Bridge instead thereof.
35. An Act for maintaining, regulating, and improving the Harbour of Barrow in the County Palatine of Lancaster.
36. An Act for better supplying with Water the borough of Derby, and certain parishes and places adjacent thereto, in the county of Derby.
37. An Act to amend three Acts of his Majesty King George the Third, and another Act of his late Majesty King, William the Fourth, for amending certain Mileways leading to Oxford, and making improvements in the University and City of Oxford, the suburbs thereof, and adjoining parish of Saint Clement; and for other purposes.
38. An Act to amalgamate the Liverpool Gaslight Company and the Liverpool New Gas and Coke Company.
39. An Act to amend and enlarge the Powers of an Act passed in the 2nd year of the reign of his Majesty King George the Fourth, and of an Act passed in the 6th year of the reign of her present Majesty, for supplying the towns of Old and New Brentford in the county of Middlesex, and other places therein mentioned, with Gas.
40. An Act to repeal the Provisions of two several Acts for lighting with Gas the town of Brightelmastone in the county of Sussex, and for making other provisions in lieu thereof.
41. An Act to authorize the Company of Proprietors of the Forth and Clyde Navigation and the Airdrie and Coatbridge Water Company to enter into agreements for certain purposes.
42. An Act to enable the Herculanum Dock Company to sell or lease Lands at Torteth Park in the county of Lancaster.
43. An Act for facilitating the transfer of the Bristol Docks to the Mayor, Aldermen, and

Burgesses of the city of Bristol, and for other purposes.

44. An Act for further extension and improvement of the Ferry, Harbours, Piers, and other works at Queensferry, on the Frith of Forth; and for other purposes connected therewith.

45. An Act for establishing direct Steam Communications across the river Tyne between the towns of North and South Shields, and between other places in the counties of Durham and Northumberland.

46. An Act for incorporating the North of Scotland Fire and Life Assurance Company, under the name of "The Northern Assurance Company; for enabling the said Company to sue and be sued, and to take, hold, and transfer property; for confirming the Rules and Regulations of the said Company; and for other purposes relating thereto.

47. An Act for enabling "The Patent Galvanized Iron Company" to purchase and work certain Letters Patent.

48. An Act for repealing an Act passed in the 6th year of the reign of his Majesty King George the Fourth, for making a Road from Battle Bridge to Holloway in the county of Middlesex.

49. An Act for repairing the Road from Nantwich to Wheelock Wharf in the County Palatine of Chester; and to repeal an Act passed in the 56th year of the reign of his Majesty King George the Third; and to continue and extend the Trust.

50. An Act to amend an Act passed in the 11th year of the reign of his late Majesty King George the Fourth, intituled "An Act for repairing and maintaining the Roads from the town of Dalkeith in the county of Loth to the towns of Castle Blayne and Carrickmacross in the county of Monaghan."

51. An Act for repealing an Act of the 9th year of the reign of his Majesty King George the Fourth, intituled "An Act for making, repairing, and improving certain Roads leading to and from Truro in the county of Cornwall, and for making other provisions in lieu thereof; for forming, vesting, and improving certain

Roads; and for continuing and extending the Truro Turnpike Trust.

52. An Act to enable the Dundee and Perth Railway Company to make a Junction Line of Railway into the Royal Burgh of Dundee.

53. An Act to continue and amend the Act relating to the Drumpeller Railway.

54. An Act to enable the Arbroath and Forfar Railway Company to raise a further Sum of Money.

55. An Act for enabling the York, Newcastle, and Berwick Railway Company to deviate or alter part of their Thirsk and Malton Branch Railway, and to abandon Part of the same; and for other purposes.

56. An Act for enabling the Leeds and Thirsk Railway Company to make a railway from Melmerby to Northallerton, and to form a junction with the York and Newcastle Railway.

57. An Act for enabling the Leeds and Thirsk Railway Company to alter the levels of certain portions of the Leeds and Hartlepool Railway, and to alter the proposed junctions with the Stockton and Darlington Railway in Eaglescliffe; and for other purposes.

58. An Act for enabling the Manchester South Junction and Altrincham Railway Company to provide additional Station Accommodation in Manchester; and for other purposes.

59. An Act to authorize the Oxford, Worcester, and Wolverhampton Railway Company to raise a further sum of money; and for other purposes.

60. An Act to enable the Chester and Holyhead Railway Company to purchase, hire, and use Steam Boats; and for other purposes.

61. An Act to enable the Waterford and Kilkenny Railway Company to make certain Deviations in the authorized Line of the said Railway; and to amend the act relating thereto.

62. An Act to alter the Line of the Great Grimsby Branch of the East Lincolnshire Railway, and to amend and enlarge the Provisions of the Acts relating to the East Lincolnshire Railway.

[The remainder of this List will be given in our next Number.]

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls' Court.

*Newton v. Askew.* August 9, 1848.

1 & 2 VICT. c. 110.—CHARGING ORDER.—TRUST MONIES.

*The Court will not give effect to a charging order under the 1 & 2 Vict. c. 110, on the application of the party who has obtained it, by restraining trustees from paying over trust monies in the way directed by an order made before the charging order was obtained.*

In this cause a decree had been made on the 16th of June last, directing a trust fund, which

was the subject of the suit, to be transferred to new trustees, and the dividends which had accumulated upon it to be paid to Mrs. Newton. The transfer had been made accordingly, but the dividends had not yet been paid. The fund consisted of 2,107l. 16s. 3 per cents., and the accumulated dividends amounted to 429l. 0s. 3d. On the 14th of July, an order was obtained from Mr. Justice Cresswell, under the 1 & 2 Vict. c. 110, and the 3 & 4 Vict. c. 82, charging this sum of stock, described as standing in the names of the old trustees, in whose names it then stood; and the accumulated dividends, with two sums of

221. 3s. and 13l. 12s., for which judgment had been obtained against Mr. Newton. The party who had obtained this order now presented his petition, praying that the dividends above mentioned, or so much as the Court might think proper, might be paid into Court, instead of being paid to Mrs. Newton, and not paid out without notice to the petitioner; and that the trustees might be restrained from making the payment to Mrs. Newton, and Mrs. Newton from receiving it. It was stated that a writ of error had been brought in respect to the judgment upon which Mr. Justice Creswell's order was founded.

Mr. Turner and Mr. Wickens for the petition.

Mr. Roupell for the trustees.

Mr. Elderton and Mr. Newton for Mrs. Newton.

Reference was made to *Reddell v. Dobree*, 10 Sim. 244; *Robinson v. Pearce*, 7 Dow. P. C. 93; *Feistel v. King's College*, 11 Jur. 546; 16 Law Jour. Chan. 339; *Bristed v. Wilkins*, 3 Hare, 235; and Black. Com. iii. 412, as to the suspension of execution during a writ of error.

Lord Langdale, after stating the facts, said, that he had no control over the charging order, but was bound to assume that it was properly made. He was told that a writ of error had been brought upon the judgment, and that therefore execution could not issue, but it did not follow that on that account the charging order was invalid. Then came the question, whether the fund could be seized. The fund no longer stood in the names of the persons in whose names it stood when the charging order was made. But the order directing the payment of the monies to Mrs. Newton remained unaffected. The trustees of those monies might indeed have said, we received notice that Mrs. Newton is indebted in a judgment debt, and that an order has been made charging these dividends, and we are in a difficulty, but they had not done so and would not do so. Then what was the Court to do? He had gone so far in similar cases as to say, that where the fund was in the hands of the Court, but was to be paid to persons not entitled to it, the Court would interfere to prevent that payment; but here the fund was in the hands of persons who received it as trustees, under an order to pay it over, and the application was made by a creditor who desired an alteration of this order. He did not think he had any right to interfere. If the funds had been in the hands of the Court, he should have respected the charging order. But the funds being in the hands of trustees, under an order of the Court, and this being an application by a creditor not interested in the proceedings in the cause, he could make no order upon it.

#### Vice-Chancellor of England.

*Cole v. Scott.* June 14, 1848.

CONSTRUCTION OF WILL.—AFTER-ACQUIRED ESTATES.—STAT. 1 VICT. C. 26.

*A testator, by his will, devised all his freehold, copyhold, and leasehold estates,*

*"whereof I am now seised or possessed in any manner."* Held, on the construction of the whole will, that those words precluded after-acquired freehold property from passing by the will.

JOHN COLE, by his will, dated April, 1843, after providing for his widow, bequeathed as follows:—"And as to all and singular the residue and remainder of my messuages, farms, lands, hereditaments, and premises whatsoever and wheresoever, and of what tenure or nature soever, and generally all the freehold, copyhold, and leasehold estates whereof I am now seised or possessed in any manner howsoever, (all which are hereinafter designated and intended to be described as my said residuary real estate,) and which are not hereinbefore specifically devised and bequeathed; and as to all the residue and remainder of my personal estate, &c., I give and bequeath the same residuary real and personal estate, and every part thereof, to my nephews, F. C. Scott and H. Scott, their heirs, executors, administrators, and assigns, upon trust, &c." In a subsequent part of the will he "gave, devised, and bequeathed unto his said nephew, H. Scott, all such manors, messuages, farms, lands, tenements, and hereditaments whatsoever, as well freehold as copyhold and leasehold, as were then vested in him, or as to the said leasehold premises should be vested in him at the time of his death as a trustee or mortgagee in any way howsoever. To hold unto and to the use of the said H. Scott, his heirs, executors, administrators, and assigns, upon and subject to the like trusts as the same were then or should be vested in him, and with the same powers and authorities, as far as he could devise and bequeath the same, as he had over the same premises respectively." The testator died on the 4th September, 1846, without altering his will, but subsequently to the date and execution of his will, he contracted for the purchase of certain freehold hereditaments and premises, without republishing his will, and the question was, whether they passed by his will, or whether he died intestate as to them? A bill was filed by R. J. Cole, the testator's heir-at-law, to establish his right, on the ground that the after-acquired property did not pass by the will. To this bill a general demurrer for want of equity was put in, which now came on to be argued.

Mr. Campbell and Mr. R. W. Moore, for the bill.

Mr. Bacon and Mr. Malins, for the demurrer, contended, that the word "now," in the phrase "I am now seised," did not express the testator's intention of excluding after-acquired estates. The word "now," under the late statute of 1 Vict. c. 26, means the time of death, unless a contrary intention appears in the will, which is not the case here, and, that being so, why is this will to be construed as speaking from the time of its execution? There have been cases in which stronger expressions than the words "now seised" have been held to pass after-acquired property. *Doe v.*



*Walker*, 12 Mee. & W. 591; *Auther v. Auther*, 13 Sim. 422; *Back v. Kett*, Jac. 534.

The Vice-Chancellor said, the question was, what was the meaning of the word "now." And, unless a contrary intention appeared from the will, the words were certainly such as to pass after-acquired property. The word "now" distinguished the present case from that of *Doe v. Walker*, which contained merely the words "I am seised;" therefore that case had nothing to do with the present; but in reality, the testator himself had said what he meant by the word "now," for the words he used were, "all such manors, &c., as are now vested in me, or, as to the said leaseholds, shall be vested in me at the time of my death," meaning thereby that the word "now" should not pass future leaseholds. Then he says—"To hold, &c., subject to the like trusts as the same are now or shall be vested in me," meaning clearly by the word "now" the very day on which he was writing, and therefore the contrary intention of the testator, alluded to in the statute, must be held to be expressed in the will, and consequently the after-purchased estates would not pass by the will.

#### Vice-Chancellor Knight Bruce.

*Langham v. Great-Western Railway Company.*  
June 8, 1848.

#### PRACTICE.—COSTS.—FILING ANSWER.

*A plaintiff filed a bill for an injunction, which was granted, and thus obtained the object of his suit. He moved, before answer, that his costs should be taxed and paid by the defendant, and that the proceedings in the suit should be stayed. The motion was refused, the Court holding that the defendant was entitled to file an answer, if he required it, to raise the question of costs.*

THE bill in this case, after setting forth that the bond given by the company on taking possession of the plaintiff's land, had not been properly entered into, prayed that the company (the defendants) might be restrained from entering into possession of it, and doing certain acts, until the value and amount of compensation had been ascertained by a jury, pursuant to the Lands' Clauses Consolidation Act. A motion for an injunction was, on the 21st of July, made on behalf of the plaintiff, when the defendants gave an undertaking not to interfere with the property until the warrant to the sheriff should be lodged, and that when the warrant was lodged they would prosecute the inquiry before the jury with due diligence. The jury subsequently gave a verdict for 5,000*l.*, being 1,700*l.* more than what had previously been offered by the defendants, and the defendants afterwards paid the amount to the plaintiff. On the 17th of August the plaintiff's solicitor wrote to the solicitors for the defendants, stating, that the plaintiff did not wish to require an answer to the bill, and inquiring whether the defendants would agree to pay the costs of the suit on the dismissal of the bill. The so-

licitors for the defendants, after some correspondence stated, that they did not consider the costs of the suit in any way incident to the jury costs, and that if the plaintiff's solicitor would send the bill of the costs relating to the suit, with a statement of the grounds on which they were claimed from the defendants, the instructions of the company would be taken on the subject. In reply, the plaintiff's solicitor stated, that if the defendants refused to pay the costs, the plaintiff had no alternative but to call for an answer and proceed to the hearing of the cause, for the purpose of recovering the costs.

Mr. Bacon and Mr. Pole moved on behalf of the plaintiff, that it might be referred to the Taxing Master to tax the plaintiff's costs of the suit and of the present motion, and that the defendants, the company, or the defendant Mr. Mowatt, or one of them, might be ordered to pay to the plaintiff the amount of such costs when taxed, and that thereupon all proceedings in the cause might be stayed. In support of the application, they cited *Sivell v. Abraham*, 8 Beav. 598; and *Winter v. Vizetelly*, 36 Legal Observer, p. 53.

Mr. Wigram and Mr. E. B. Denison, for the defendants, were not called on to oppose the motion; but, on the question of costs, cited *Malims v. Price*, 2 Coll. 190.

His Honour said, that in the case of *Winter v. Vizetelly*, before the Vice-Chancellor of England, there was no opposition: the parties had made an agreement to pay the costs. A defendant, he concluded, was entitled to file an answer to be read on the question of costs. The motion must be refused, although he must confess that reason and sense seemed to be in favour of it. He said this, assuming, as he must for the present purpose, that the statements of the plaintiff's bill were true. He should reserve the costs of the motion, the defendants not showing sufficient cause to the contrary.

#### Queen's Bench.

(Before the Four Judges.)

*Palk v. Force.* Trinity Term, 1848.

#### PLEADING.

*Where a liability is created by one section of a statute, and an exception from that liability is granted by another section in the same statute, or by a different statute, a party desiring to charge another with the liability, is not bound to negative the application of the exception. It is for the other party to set up the exception in answer. This rule applies equally to a declaration and to any subsequent pleading.*

THIS was an action for work and labour. The defendant pleaded that the work in respect of the doing of which the action was brought was the appraisement of personal property, and that the plaintiff did such work without having first taken out a license as an appraiser. The plaintiff demurred to this plea, for that it was not alleged that plaintiff made

such appraisement in the character of an appraiser, and also for that it did not negative that the plaintiff fell within the exceptions to be found in the statutes relating to appraisements. The case was argued some time since, and

Lord Denman, C. J., now delivered the judgment of the Court. Having stated the nature of the pleadings, his lordship observed,—As to the first of the objections stated as grounds for demurrer, we think that the declaration is sufficient. The case of *Atkinson v. Fell*,<sup>a</sup> was relied on in support of this objection, but that case does not require it to be shown that the person making the appraisement acted in the character of an appraiser, but only established that there may be instances in which parties make valuations without in any degree coming within the terms of the Stamp Acts; as there, for example, the work was done by two resident parishioners, for the mere personal information of those who had employed them. Nor as to the second objection do we think the plea defective. It was argued in answer to this objection, that the rule of pleading which requires the pleader to negative certain cases of exemption from the operation of a statute, applies only to a declaration and not to any subsequent pleading. That argument was attempted to be set up in *Thibault v. Gibson*,<sup>b</sup> in order to distinguish that case from the previous case of *Turquand v. Mosedon*,<sup>c</sup> when it was said that greater strictness was required in a plea than in a declaration; but the Court did not adopt the argument, but referred the question rather to the statute, which was the subject of the pleading, than to the question, at what stage of the cause the pleading took place. The observations made in *Thibault v. Gibson*, by Lord Abinger, in delivering judgment, clearly lay down the rule as to the mode of alleging facts which are to bring a party within the operation of a particular statute. His lordship said,<sup>d</sup> “I believe it is a well-established principle, that in all cases where proceedings are taken against a party for the recovery of a penalty under a statute, if there is any exception in the clause which gives the penalty, exempting certain cases from its operation, the declaration or information must show that the particular case is not within that exception. But where it comes by way of proviso in a subsequent part of the act, it is not necessary to notice it in the declaration or information, but it is matter which the defendant must allege as ground of defence. The same rule applies with increased force and efficiency to the cases where penalties are given by one statute, and particular cases are, by a subsequent statute, exempted from its operation.” The original liability of a person acting as an appraiser is founded on the 46 G. 3, c. 43, ss. 1 & 4, and the exemption of an auctioneer from liability to take out an appraiser's license is declared by section 7. The rule, as laid down in Lord Abinger's judgment,

expressly applies therefore to this case, for the liability being in one section, and the exemption in another, the subsequent section is a subsequent act for such a purpose. The rule of pleading in such case applying to a plea as well as to a declaration, we think it was sufficient for the defendant to allege the liability of the plaintiff under the section which created that liability, and that it was for the plaintiff to show that he fell within the subsequent section which created the exemption. The judgment must be for the defendant.

### Court of Bankruptcy.

*In re Burts.* Saturday, October 7, 1848.

DISCRETIONARY POWER UNDER 11 & 12 VICT. C. 86.

*The power given to the Commissioners in Bankruptcy, under the 11 & 12 Vict. c. 86, is discretionary, and will not be exercised in favour of a bankrupt who has shown no disposition to do justice to his creditors by making out his accounts.*

An application was made to Mr. Commissioner *Evans*, under the statute 11 & 12 Vict. c. 86, s. 2, to order the release of Edward Burts, a bankrupt, in custody. It appeared that the bankrupt came up for his last examination on the 29th June, and not having filed a balance sheet satisfactory to the Commissioner, or satisfactorily explained why he had neglected so to do, his last examination was adjourned *sine die*, without protection. The bankrupt was arrested on the 1st July, at the suit of Messrs. Ward & Co., judgment creditors, who had not proved under the fiat. It was submitted, that the object of his arrest was, to induce the bankrupt to pay the detaining creditors, to the prejudice of the general body of creditors, and that an imprisonment of more than three months, at the suit of such creditors, justified the Court in interfering, by ordering his release. The application was opposed, on the grounds that the Court had no jurisdiction, and if there was jurisdiction, that the bankrupt's conduct had rendered him undeserving of the relief now sought for.

Mr. Commissioner *Evans* had no doubt that he had power to order the bankrupt's release under the recent act 11 & 12 Vict. It was his duty, however, to exercise a discretion, and, upon looking through the proceedings in this case, it did not appear that the bankrupt had made the slightest attempt to assist his creditors by making out proper accounts. A bankrupt who had not shown at least some anxiety to make out correct accounts, surely must not expect the Court to interfere in his behalf. Until he had evinced a disposition to do justice to his creditors, no order could be made for his release from prison. It was a misapprehension of the principle of the new act to suppose, because a bankrupt was three months in prison, he was entitled to his release.

Application refused.

<sup>a</sup> 5 Maule & S. 240.

<sup>b</sup> 12 M. & W. 88.

<sup>c</sup> 7 M. & W. 504.

<sup>d</sup> 7 M. & W. 94.

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

## Courts of Common Law.

## PRACTICE.

[Concluded from p. 496.]

[For the previous Sections of this Series of the Digest in the present Volume, see

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Law of Costs, p. 234.

Law of Wills, p. 37.

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Law of Railways, p. 475.

## Courts of Equity.

Construction of Statutes, p. 58.

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## Courts of Common Law :

Evidence, p. 272.

Magistrates' and Poor Law Cases, p. 289.

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Law of Property and Conveyancing, p. 370.

Principles of the Common Law and Grounds of Action, pp. 393, 411.

Pleadings, p. 430, 451.

Practice, p. 492.]

## LETTERS PATENT.

*Declaration.*—Renewed letters patent were granted to *B.*, on his securing to *A.*, the original inventor, an annuity of 500*l.*, so long as the new letters patent should last; but if he could not secure such an annuity, then, upon signification thereof to her Majesty, &c., the new letters patent should cease. In an action by *B.* for an infringement of the patent, the declaration stated, that from the making of the said letters patent hitherto, the annuity had been duly secured to *A.*, according to the true intent and meaning of the letters patent: *Held*, sufficient, after verdict. *Ledsam v. Russell*, 16 M. & W. 633.

## LIMITATIONS, STATUTE OF.

See *Process*.

## MANDAMUS.

*Notice.*—Notice and grounds of appeal under the 4 & 5 W. 4, c. 76, s. 81, should be given 14 days before the 1st day of the general quarter sessions, and not 14 days before the 1st day on which the adjourned sessions are appointed

to be held, for the division in which the appeal is to be tried.

When the quarter sessions were held at *B.*, and by adjournment in each of the three divisions of a county, and the appellants had given notice and grounds of appeal 14 days before holding the sessions for the division, but not 14 days before holding the sessions at *B.*; and the sessions, on the objection being taken, dismissed the appeal; this Court refused to grant a mandamus, compelling them to enter a continuance and hear it. *Reg. v. Justices of Suffolk*, 4 D. & L. 628.

Cases cited in the judgment: *Rex v. Coystan*, 19 Vin. Abr. 356; *Rex v. Inhabitants of Polstead*, 2 Stra. 1263; *Rex v. Justices of Sussex*, 7 T. R. 107.

## MISDIRECTION.

See *Particulars*, 3.

## NEW ASSIGNMENT.

To trespass for breaking and entering the plaintiff's close, the defendant pleaded a right of way over the *locus in quo*. The plaintiff new assigned trespasses *extra viam*. The defendant pleaded to the new assignment that, whilst he had the said right of way, the plaintiff obstructed the way by digging a trench, &c., and that for the purpose of avoiding the obstruction and using the way, the defendant went along the part of the close in the new assignment mentioned. *Replication de injuria*: *Held*, (*Platt, B.*, dissentiente,) that the right of way stated in the plea to the declaration was not admitted by the new assignment; and that, being substantially re-asserted in the plea to the new assignment, the defendant was bound to prove it. *Robertson v. Gaultlett*, 4 D. & L. 548.

Cases cited in the judgment: *Norman v. Wescombe*, 2 M. & W. 349; *Brancher v. Molyneux*, 1 M. & G. 710; 1 *Scott*, N. R. 555.

## NULLITY.

See *Setting aside Verdict*.

## OUTLAWRY.

*Writ of error.*—In suing out a writ of error to reverse an outlawry which has issued against a defendant for not putting in an appearance in an action, it is not necessary that the outlaw should make an appearance in the action to enable him to sue out the writ; nor is it necessary that the attorney suing out the writ should depose that he is authorized by the outlaw to sue out the writ; that being only necessary on proceedings to reverse an outlawry by motion, and not where it is done by writ of error. *Cornwall v. Ives*, 35 L. O. 345.

## PARTICULARS OF DEMAND.

1. In an action by a surveyor to recover for

work done and money expended, in respect of a projected railway company, where it does not appear that the defendant is other than a stranger to the plaintiff, and to the nature of his claim, the particulars of demand must be more explicit than in ordinary cases.

In such a case, therefore, the Court required the particulars to state how many men were employed in the survey, &c., and for what time; and to separate the tavern charges from posting and other expenses; and to state for whom the former were incurred. *Prichard v. Nelson*, 4 D. & L. 693.

2. *Non pros.*—The defendant had obtained an order for particulars of plaintiff's demand before declaration, with a stay of proceedings until delivery. After two Terms had elapsed without such delivery, he obtained an order to rescind his former order, and served it, with a demand of a declaration within four days. No declaration having been delivered within the four days, he signed judgment of *non pros.*: *Held*, that the judgment was regular. *Johns v. Saunders*, 5 D. & L. 49.

3. *Misdirection.*—*Set-off.*—*New Trial.*—A declaration in debt contained counts for money lent, money had and received, and money due on an account stated, in each of which the defendant was alleged to be indebted to the plaintiff in 6l. 10s. The defendant pleaded a set-off of 50l. The particulars of demand claimed 6l. 10s. for money lent. At the trial the defendant proved a set-off for 6l. 10s. The undersheriff thereupon directed the jury to return a verdict for the defendant: *Held*, that this was a misdirection on the part of the under-sheriff, and a rule for a new trial, which had been obtained, was made absolute. *Roche v. Champain*, 5 D. & L. 121.

4. The words "dates and items," which are not in the printed form of an order for particulars, ought not to be inserted; if they are, the judge to whom the application is made will strike them out. *Montague v. Payne*, 35 L. O. 298.

#### PARTICULARS OF SET-OFF.

An order was made for delivery of particulars of set-off, with dates, and in default thereof, that the defendant should be precluded from giving evidence of set-off. Particulars were delivered, but without dates, subsequently to which the plaintiff replied, and the cause came on for trial, when the judge refused to receive the evidence of set-off: *Held*, that the evidence was properly rejected, the order not having been complied with; and that the plaintiff had not waived the objection by replying to the plea. *Ibbett v. Leaver*, 4 D. & L. 716.

See *Particulars of Demand*, 3.

#### PRISONER.

1. *Detainer.*—*Sunday.*—The defendant, who was in custody at Cambridge, received an order on a Saturday for his discharge: this was forwarded to the under-sheriff at Wisbeach; on the next day, *Sunday*, the gaoler received a warrant of detainer under a writ of *ca. sa.*,

which had been issued the day before: *Held*, that the sheriff was entitled to detain the defendant for a reasonable time after the receipt of the order, for the purpose of searching his office for writs, and that the defendant was not entitled to his discharge under 29 Car. 2, c. 27, s. 6, on the ground that the service of the warrant on Sunday was void. *Samuel v. Buller*, 1 Exch. R. 439.

2. *Discharge.*—The Court refused to discharge out of custody a defendant taken in execution in the year 1828, upon affidavit that the plaintiff had died in 1839, and that the defendant had been informed, and believed, that no legal representative of the plaintiff had revived the action, or had taken any proceedings whatever in the matter, since the death of the plaintiff. *Taylor v. Burgess*, 4 D. & L. 708.

#### PROCESS.

*Amendment.*—*Statute of Limitations.*—In an action by the assignees of a bankrupt against the public officers of a banking company, to recover money alleged to have been received from the bankrupt in the year 1840, the Court, in order to save the Statute of Limitations, allowed the writ of summons to be amended, by stating the character of the plaintiffs and defendants. *Christie v. Bell*, 16 M. & W. 669.

#### QUO WARRANTO.

*For what office it lies.*—*P.*, by will, directed that six poor persons of *E.* parish, should have a weekly allowance and lodging in an almshouse to be built in *E.*; and he devised lands to trustees, out of which the expense was to be defrayed, and also on condition that the trustees should find a person qualified to keep a free grammar school in *E.* or in *R.*; and the will gave directions concerning the rules of the school, and the putting in and paying the schoolmaster and usher.

Afterwards, by charter, reciting the will, and that there had been built an hospital at *E.*, in which poor persons were relieved, and a free school at *R.*, it was granted that there should be in *E.* an hospital, and in *R.* a free grammar school, the said hospital and school to consist of a master, a schoolmaster, ushers, poor men, and poor scholars, who were made a corporation; that there should be governors, with power to correct abuses, and make laws for the governing of the corporation, and their lands and goods; that the master should be a master of arts of Oxford or Cambridge, and a preacher of God's word, and should, in person or by deputy, preach once every Sunday in the parish church of *E.*, and read prayers twice every day in the week in that church. By act of parliament (5 G. 4, c. 38, private,) it was enacted, that the affairs of the corporation, without prejudice to the powers and privileges of the governors, should be managed by a court of managers, consisting of certain members of the corporation. And it was provided, that when any of the governors should be a minor or under legal disability, the guardian, &c. of such governor should act in his stead: *Held*, that the mastership was not an office for which an information

of a *quæ*  
*v. Mousley*, 8 Q. B. 946.

#### RIGHT TO BEGIN.

1. *Nisi Prius* trial.—To a declaration in trespass defendant pleaded a justification, setting up an affirmative right in himself, which right the replication traversed. At the trial, the plaintiff's counsel claimed the right to begin. The judge asked whether he would undertake to proceed for substantial damages, and, on counsel declining so to undertake, allowed the defendant to begin. *Held*, correct. *Chapman v. Rawson*, 8 Q. B. 673.

2. The Court will not set aside a verdict on the ground that the wrong party was allowed to begin, unless it appears that some manifest injury has resulted therefrom. *Edwards v. Matthews*, 4 D. & L. 721.

#### RECORD.

*Improper alteration.*—*Verdict.*—The Court will not permit a party to retain a verdict upon a record which has been improperly altered by him. *Suker v. Neale*, 1 Exch. R. 468.

#### REPLEVIN.

*Tender.*—The tender of a sum of money where more is claimed is a good and valid tender of that sum, and the person receiving it does not thereby prejudice his right to recover the remainder; but a tender of a smaller sum which imposes a condition on the person accepting it that it shall be in full discharge of the debt, or in full of all demands, is invalid. *Bowen v. Owen*, 35 L. O. 146.

#### SCI. FA.

1. *Executors.*—*Probate.*—An affidavit in support of a rule absolute for judgment in *sci. fa.*, at the suit of executors, must show that probate has been granted to them. *Vogel v. Thompson*, 1 Exch. R. 60; S. C. 5 D. & L. 114.

2. *Banking co-partnership.*—7 G. 4, c. 46.—The Court will not shorten the time for showing cause against a rule for issuing a *sci. fa.*, on the ground that the three years limited by the statute for proceeding against retired members of a banking co-partnership might expire before execution could issue. *Field v. McKenzie*, 5 D. & L. 172.

3. Execution was issued against several existing members of a banking co-partnership, established under the 7 G. 4, c. 46, and no satisfaction had been obtained, and grounds were shown for believing that none of the existing members were solvent, the Court permitted a *sci. fa.* to issue against persons who were members at the time of the contract being made, although execution had not been issued against all the existing members, (*Wilde, C. J., dubitante*). *Field v. McKenzie*, 5 D. & L. 172.

#### SEQUESTRATION.

*Interest on Judgment.*—A plaintiff having obtained judgment against a beneficed clergyman in 1834, issued a sequestration to the bishop of his diocese to sequester the profits of

his living. In the year 1838, an act was passed (1 & 2 Vict. c. 110, s. 17,) which gave judgment creditors a right to four per cent. interest on judgments obtained by them from the time of the act coming into operation, as to judgments entered up before the act, and as to those entered up after, from the time of so entering it up. In December, 1839, another writ of sequestration was lodged with the bishop against the profits of the living at the suit of other parties. A motion being made by the first sequestrator that the writ of *sequestrari facias* should be handed over to him to enable him to indorse the amount of interest from 1838, thereon, the Court refused to make such an order. *Watkins v. Tarply, clerk*, 35 L. O. 262.

#### SERVICE OF PROCESS.

*Officer of corporation.*—Service of a writ of summons on a clerk in the office of the secretary of a corporation aggregate, is not sufficient service on the "clerk or secretary," under 2 W. 4, c. 39, s. 13, so as to authorize a motion for a distringas, or to enter an appearance for the defendants. *Walton v. Universal Salvage Company*, 16 M. & W. 438.

#### SETTING ASIDE VERDICT.

*Writ of trial.*—*Irregularity.*—*Nullity.*—An order having been made on the 6th of July, 1846, by a judge at chambers, to set aside a verdict obtained under a writ of trial, on the ground of the inconsistency of the notice of trial: *Held*, that the order was merely irregular, and not a nullity; and, therefore, that an application on the last day of Trinity Term, 1847, to rescind it, was too late. *Orgill v. Bell*, 1 Exch. R. 466.

#### SET-OFF.

*Conclusion of replication.*—To assumpsit against an executor, on an account stated by him as executor, a set-off for debts due from plaintiff to testator in his lifetime may be pleaded. So held on demurrer to the replication.

The plea averred that the debt set off was equal in amount to the damages sustained by the breach of the promises. The plaintiff replied, as to 1,493*l.*, parcel of the set-off, the Statute of Limitations; and further replied that plaintiff was not indebted to testator, or defendant as executor, beyond the 1,493*l.*, *modo et formâ*; with a single conclusion as to the whole replication: *Held*, on special demurrer, a bad conclusion.

*Quære*, whether the replication was bad for duplicity. *Blakesly v. Smallwood*, 8 Q. B. 538.

See *Particulars of Demand*, 3.

#### SHERIFF.

*Fees.*—*Attorney's liability.*—In an action by a sheriff's officer against the attorney of the plaintiff for levy and caption fees, evidence of usage that "the sheriff's officer always looks to the attorney, and not to the plaintiff in the action," cannot be admitted.

*Quare*, whether a sheriff's officer can maintain an action for levy and caption fees against the attorney of the plaintiff, unless specially employed by him? *Seal v. Hudson*, 4 D. & L. 760.

## SPECIAL CASE.

*Jurisdiction of Court.*—*Construction of 3 & 4 W. 4, c. 42, s. 25.*—The consent and agreement of the parties to the statement of a special case under the 3 & 4 W. 4, c. 42, s. 25, must be unconditional in order to give the Court jurisdiction to entertain it.

Where, therefore, the statement of the case was subject to a power given to either party to turn the special case into a special verdict for the purpose of having a writ of error, the Court refused to hear it argued, unless the parties agreed absolutely to be bound by the special case. *Engstrom v. Brightman*, 35 L. O. 463.

## SPECIAL JURY.

1. The subject's right to try a case by a special jury is not affected by any suggestion of the Attorney or Solicitor-General, without affidavit that the Crown is interested in the defendant's estate, though that suggestion would be sufficient to obtain a trial at bar. *Dunn v. Cox*, 16 M. & W. 439.

2. *Service of rule.*—*Reasonable promptitude.*—The rule of Hilary Term, 1 Vict., rule 3, applies only to the application for a rule for a special jury, and does not render irregular the service of the rule, though not made more than six days before the day for which notice of trial has been given.

Where notice of trial had been given for the 26th, and a rule for a special jury obtained by the defendant on the 19th of the same month, was served on the 20th, and on the 24th there followed a service of the notice to strike the special jury on the 26th: *Held*, that the plaintiff, who had countermanded the notice of trial, could not complain of want of reasonable promptitude on the defendant's part. *Strouhill v. M'Leod*, 35 L. O. 413.

## STAYING PROCEEDINGS.

1. The Court will stay proceedings, without costs, in an action against one of several joint-contractors, where the same debt has been recovered in an action against another of the joint-contractors. *Newton v. Blunt*, 4 D. & L. 674.

Cases cited in the judgment: *King v. Hoare*, 2 D. & L. 382; 13 M. & W. 494; *Peshall v. Layton*, 2 T. R. 712.

2. *Payment of admitted breaches of bond.*—The Court will not, in an action against sureties on a bond, stay proceedings as to certain breaches, on payment into Court of the amount admitted to be due on those breaches, so as to enable the defendant to try the question of liability on other breaches. *Kepp v. Wiggett*, 5 D. & L. 164.

## STET PROCESSUS.

Where a defendant obtained a rule nisi for judgment as in case of a nonsuit, to which,

under the circumstances, he was not entitled, and the plaintiff offered a *stet processus*, the Court discharged the rule with costs, unless the defendant agreed to the *stet processus* in a week. *Barker and another v. Berry*, 35 L. O. 463.

## STRIKING OUT COUNT.

*Authority for application.*—An affidavit sworn, for the purpose of obtaining a rule, by a party styling himself clerk to A. and B. "agents for the defendant," shows sufficiently that the application is authorized by defendant, if it does not appear that he is absent from the country. *Slack v. Clifton*, 8 Q. B. 524.

## TENDER.

See *Replevin*.

## TRIAL, NEW.

1. Where a cause stood No. 15 on the list in the Sheriffs' Court, and the practice of the Court was to go through the list and take the undefended causes first, and on coming to No. 15, the plaintiff's attorney stated it to be undefended, having good ground for believing it to be so, and the cause was accordingly taken and tried in the defendant's absence: *Held*, no ground for a new trial. *Banks v. Newton*, 4 D. & L. 632.

2. The Court permitted a motion for a new trial to be made more than a year after the verdict was pronounced, a bill of exceptions which had been tendered at the trial not being sealed in consequence of the judge's death. *Newton v. Boodle*, 4 D. & L. 664.

3. *Misdirection on one of several issues.*—*Costs.*—Where, in trespass, there were several issues, one of them on a plea of lib. ten., and the judge at the trial improperly rejected evidence applicable to that issue only, the Court discharged a rule for a new trial, after a verdict for the defendant on several issues, on his consenting to the verdict being entered for the plaintiff on that issue, and gave no costs of the rule to either party. *Hughes v. Hughes*, 15 M. & W. 701.

Cases cited in the judgment: *Doe d. Lord Teynham v. Tyler*, 6 Bing. 564; *Crease v. Barrett*, 1 C. M. & R., 919; *Moore v. Tuckwell*, 1 C. B. 607.

See *Particulars of Demand*, 3.

## TRIAL, NOTICE OF.

Where the plaintiff's pleading concludes to the country, he may give notice of trial under Reg. Gen., Hil. T., 2 W. 4, r. 59, either at the time of delivering the pleading or afterwards, without waiting for the similitur to be added. Where a rule nisi has been obtained to set aside a notice of trial, with a stay of proceedings: *Semble*, that it is no violation of the rule to countermand the notice of trial. *Mullins v. Ford*, 4 D. & L. 765.

## VENUE.

*Action on a banker's cheque.*—*affidavit.*—The venue in an action on a banker's cheque cannot be changed, except on an affidavit

stating special circumstances, and the order for that purpose, if obtained on the ordinary form of affidavit merely, will be set aside as irregular. *Webb v. Inwards*, 35 L. O. 371.

#### WAIVER OF OBJECTION.

*Judgment and execution.*—Where a plaintiff in an action holds a collateral security for the payment of the money sought to be recovered, and a judgment in such action is irregularly signed, execution issued, and the money levied; a subsequent demand by the defendant and acceptance of such collateral security is a waiver of the irregularity in the judgment. *Hills v. Silcock*, 35 L. O. 331.

#### WARRANT OF ATTORNEY.

1. *Authority for application to set aside, where party is abroad.*—*W.* executed, at Brussels, in June, 1843, a warrant of attorney to confess judgment: and judgment was entered on it. In Jan., 1846, a rule *nisi* was obtained to set the warrant and judgment aside. There was nothing to show that *W.* authorised the application, except that the affidavit in support of the rule was made by a party who styled himself clerk to *L.*, "attorney for the above-named defendant: *Held*, that it ought to have appeared more expressly that the application was made on behalf of *W.*; and the Court discharged the rule, but without costs. *Hume v. Lord Wellesley*, 8 Q. B. 521.

Case cited in the judgment: *Lewis v. Earl of Tankerville*, 2 Dowl. N. S. 754.

2. *Waiving irregularity.*—*Interest.*—A warrant of attorney authorizing judgment to be signed for 110*l.*, besides costs of suit, contained a memorandum that it was given to secure the payment of 55*l.* by instalments, and in default of payment of any instalment, power was given to sign judgment and issue execution for the whole amount, and to levy for sheriff's poundage, &c. Judgment was signed on the 11th of Feb., 1847, for 200*l.* debt, and 3*l.* 10*s.* damages and costs, and, on the same day, a writ of *ca. sa.* was issued for the same amount, indorsed to satisfy 59*l.* 7*s.*, together with sheriff's poundage, under which the defendant was taken in execution on the 18th of March. On the 3rd of April, the defendant applied to set aside the judgment and writ of execution, on the ground that there was no proper attestation of the warrant, which summons was dismissed; and, on the 10th, he made a second application for the same purpose, on the ground that the debt had been satisfied; which second summons stood over on account of the non-attendance of the plaintiff's attorney. In Easter Term, on the 21st of April, a rule *nisi* was obtained to set aside the appearance, declaration, judgment, and writ of execution, and to discharge the defendant out of custody, on the ground that the judgment signed was not authorised by the warrant of attorney, and that the writ of execution should have contained in it a claim for interest, in pursuance of the Reg. Gen. Hil. T., 3 Vict., or have stated the date of the judgment; *Held*, that the judgment and

writ of execution, in being for 200*l.* instead of the sum authorized by the warrant, were not void, but voidable only; and that the defendant had waived the irregularity, by applying on two former occasions to a judge at chambers to set aside the proceedings, without taking any objection on this ground: *Held*, also, that the Court would not attribute the difference between the amount of 55*l.*, the sum secured by the warrant of attorney, and 59*l.* 7*s.*, the sum indorsed on the writ, to a claim for interest, as it might fairly be presumed to refer to incidental expenses of the caption, &c.; and, therefore, that it was not necessary that the writ should contain the clause for interest in the form given, Reg. Gen. Hil. T., 1 Vict. No. 1, or should state the date of the judgment. *Stopsford v. Fitzgerald*, 4 D. & L. 725.

3. *Defeasance.*—The omission to comply with the Reg., M. T., 42 G. 3, which requires the attorney preparing the warrant of action to cause the "defeasance to be written on the same paper or parchment, on which the warrant of attorney shall be written; or cause a memorandum in writing to be made on such warrant of attorney, containing the substance and effect of such defeasance," does not render the warrant void as between the parties. *Joel v. Dicker*, 5 D. & L. 1.

4. *Reference to master.*—Where judgment had been signed on a warrant of attorney, the defeasance of which did not contain the true terms of the agreement upon which it was to be void, pursuant to Reg. M. T., 42 G. 3; and the judgment appeared to have been signed before certain bills of exchange, for which it was given as collateral security, had become due; the Court referred it to the Master to ascertain what was due to the plaintiff, and ordered, that upon payment of that sum, and the costs of the proceedings, the bills of exchange should be delivered up to the defendant, and satisfaction should be entered on the judgment. *Joel v. Dicker*, 5 D. & L. 1.

5. *Naming attorney.*—It is not necessary that the defendant should actually nominate the attorney attesting a warrant of attorney on his behalf; it is sufficient if, of his own free will, he adopts an attorney suggested by the plaintiff.

Nor is it necessary that the attorney should be cognizant of the facts under which the warrant of attorney is given, or that he should consult with the defendant in private, previous to signing; it is enough if the attorney be there, willing to give the defendant the advice if he asks it; and he cannot complain afterwards that his interests were not protected, if he withhold from the attorney the necessary information. *Joel v. Dicker*, 5 D. & L. 1.

Cases cited in the judgment: *Taylor v. Nicholl*, 8 Dowl. 242; *Hale v. Dale*, 8 Dowl. 599; *Pease v. Wells*, 8 Dowl. 626.

6. *Attestation.*—A warrant of attorney to confess judgment was attested as follows:—"Signed, sealed, and delivered, (being first duly stamped), by the said James Kershaw,



in the presence of William Keating Taylor, one of the attorneys of her Majesty's Court of Queen's Bench, at Westminster, and attorney on behalf of the said James Kershaw, expressly named by him, and attending at his request to inform him, and I did inform him of the nature and effect of the above written warrant of attorney before the same was executed by him, and I declare myself to be the attorney of the said James Kershaw. William Keating Taylor."

*Held*, on motion to set aside the warrant of attorney, that the attestation was a sufficient compliance with the 1 & 2 Vict. c. 110, s. 9, which requires that the attorney shall "state that he subscribes as such attorney." *Pope v. Kershaw*, 35 L. O. 296.

WRIT OF ERROR.

See *Outlawry*.

WRIT OF SUMMONS.

*Service of.—Entering appearance.*—The admission by the defendant, an attorney carrying on business in London, of the receipt of an original writ of summons issued into Middlesex, and a copy, both having been sent by post, accompanied by the defendant's promise to enter an appearance, is not sufficient to entitle a plaintiff to more than a rule nisi to enter an appearance for the defendant. *Grand Junction Waterworks Company v. Roy*, 35 L. O. 13.

WRIT OF TRIAL.

See *Setting aside Verdict*.

BUSINESS OF THE COURTS.

COMMON LAW SITTINGS.

Queen's Bench.

In and after Michaelmas Term, 1848.

MIDDLESEX.

In Term.

1st Sitting, Friday . . . . . Nov. 5  
And two following days at 11 o'clock.

2nd Sitting, Tuesday . . . . . Nov. 7  
And subsequent days at Eleven o'clock.

3rd Sitting, Thursday . . . . . Nov. 23

At ½ past Nine o'clock precisely, for Undefended Causes only.

A list of Causes will be printed immediately, but on the uncontradicted statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, and a small number of completed and new causes will be put into the list, day by day, in their usual order.

Sitting after Term, Monday . . . . . Nov. 27  
At half-past 9 o'clock.

LONDON.

In Term.

Sitting at 10 o'clock, Friday . . . . . Nov. 24  
For Undefended Causes and such as the Judge considers fit to be taken.

After Term.

Tuesday . . . . . Nov. 28  
(To adjourn.)

Common Pleas.

In and after Michaelmas Term, 1848.

In Term.

MIDDLESEX.

LONDON.

Wednesday . Nov. 8 | Friday . . . Nov. 10  
Wednesday . Nov. 15 | Friday . . . Nov. 17

After Term.

MIDDLESEX.

LONDON.

Monday . . . Nov. 27 | Tuesday . . . Nov. 28  
N.B. The Court will sit at ten o'clock in the fore-

noon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Tuesday the 28th Nov., in London, no causes will be tried, but the court will adjourn to a future day.

Exchequer of Pleas.

See p. 416, ante.

COMMON LAW CAUSE LISTS.

Exchequer of Pleas.

PEREMPTORY PAPER.

For Michaelmas Term, 1848.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

Rule Nisi.

18th Jan. 1848.—Norton v. Robinson and another—Mr. Cowling and Mr. Martin.

10th June, 1848.—Thorpe, clk. v. Plowden—Mr. Pigott and Mr. Whyte.

30th May, 1848.—Thomas v. Jones—Sir John Bayley and Mr. Prentice.

12th June, 1848.—Sowler v. Rhodes—Mr. Sanders and Mr. Hoggins.

DEMURRERS.

For Judgment.

Jones v. Morris and another, (Replevin 1st action.)

(Heard 31st May, 1848.)

Hugh and others v. Jaggan and another.  
(Heard 9th June, 1848.)

Miller and another v. Hay.  
(Heard 1st July, 1848.)

Pitman v Woodbury.  
(Heard 11th July, 1848.)

For Argument.

Graham and others, assignees, &c. v. Deane.

Giles v. Hutt and others.  
 Dawson and another v. Dawson.  
 Norton v. Walker.  
 Howard and another, exors., &c., v. Oakes.  
 Wilkes v. Cutler and others.  
 Lewellin and others v. Bowen.  
 Tatton v. Hammersley.  
 The London, Brighton, and South Coast Railway Company v. Goodwin.  
 Moore v. The Metropolitan Sewage Manure Co.  
 Tasker, clk., v. Bullman, covt.  
 Castell v. Kirkland.  
 Frampton, P. O. v. Habgood.  
 Dawson v. Wrench, sued with others.  
 Harding v. Brown.  
 Curlewis v. Clark, sued, &c.

## SPECIAL PAPER.

## For Judgment.

Graham and others, assignees, &c., v. Allsopp.  
 (Heard 8th May, 1848.)  
 Toynbee v. Brown, clk.  
 (Heard 13th May, 1848.)  
 Bielby v. Shepherd.  
 (Heard 16th May, 1848.)  
 Lamprell v. The Guardians of the Billericay Union.  
 (Heard 7th June, 1848.)

## For Argument.

Addenbrooke and others v. Botfield, by rule of court.  
 Frith and others v. Cazenove and another, by order of *Nisi Prius*.  
 Hopkinson, Treasurer, v. Puncher and another, by order of Baron Alderson.  
 Wood and others v. Waud and others, by order of *Nisi Prius*.  
 Cooper v. Norfolk Railway Company, by order of Baron Alderson.  
 Williams, exor., &c., v. Griffith, by order of *Nisi Prius*.  
 Purvis and others v. Traill, Esq., by order of Baron Parko.  
 Bamford v. Hles and others, by order of Baron Alderson.

## NEW TRIAL PAPER.

For Michaelmas Term, 1848.

## FOR JUDGMENT.

Moved Michaelmas Term, 1847.

Middlesex, Mr. Baron Platt.—Morley v. Attenborough—Mr. Martin.

(Heard 11th May, 1848.)

London, Lord Chief Baron.—Burnside v. Dayrell—Mr. Crowder.

(Heard 29th May, 1848.)

Moved Hilary Term, 1848.

London, Lord Chief Baron.—Willey v. Parratt and others—Sir F. Thesiger.

(Heard 1st June, 1848.)

London, Lord Chief Baron.—Daines v. Hartley and another—Mr. Chambers.

(Heard 8th June, 1848.)

Moved Easter Term, 1848.

London, Lord Chief Baron.—Landon v. Beioley—Mr. Crowder.

(Heard 15th June, 1848.)

## FOR ARGUMENT.

Moved Michaelmas Term, 1847.

London, Lord Chief Baron.—Burnside v. Dayrell—Mr. Martin.

Moved Hilary Term, 1848.

London, Lord Chief Baron.—Herring v. Hudson and others—Mr. Watson.

London, Mr. Baron Rolfe.—Kitchingman v. Skeel and another, exors., &c.—Mr. Lush.

Moved Easter Term, 1848.

Middlesex, Lord Chief Baron.—Long v. Rennie and another—Mr. Hill.

London, Lord Chief Baron.—Sage v. Robinson—Mr. Humfrey.

Liverpool, Mr. Baron Rolfe.—Standish v. Ross, jun.—Mr. Martin.

Taunton, Mr. Baron Platt.—Brown v. Notley—Mr. Serj. Kinglake.

Hertford, Lord Denman.—Ehrensperger v. Anderson—Mr. Serj. Channell.

Sussex, Mr. Justice Coleridge.—Donne v. Smith—Mr. Serjt. Shee.

Surrey, Lord Denman.—Hosking v. Phillips—Mr. Serj. Channell.

Lincoln, Lord Chief Justice Wilde.—Codd v. Casey—Mr. Humfrey.

Derby, Lord Chief Justice Wilde.—West v. Fritche—Mr. Macaulay.

Warwick, Lord Chief Justice Wilde.—Smith v. Davenport—Mr. Whitehurst.

Warwick, Lord Chief Justice Wilde.—Barrett and another v. Jerney and others—Mr. Humfrey.

Warwick, Lord Chief Justice Wilde.—Higgins v. Hopkins—Same.

Warwick, Lord Chief Justice Wilde.—Forrester v. Smith—Same.

Warwick, Mr. Justice Maule.—Stanton, on affid. v. Knight—Mr. Whitehurst.

Warwick, Mr. Justice Maule.—Cox v. The Midland Railway Company—Mr. Humfrey.

Warwick, Mr. Justice Maule.—Davies and another v. The Midland Railway Company—Same.

Warwick, Mr. Justice Maule.—Silk v. Same—Same.

Stafford, Mr. Justice Patteson.—Dobbs v. Penn—Mr. Serjt. Talfourd.

Stafford, Mr. Justice Patteson.—Stevenson v. Buckton—Same.

Hereford, Mr. Justice Patteson.—Price and another, executors, &c. v. Woodhouse and another—Mr. Godson.

Gloucester, Mr. Justice Patteson.—Cannock v. Jones—Mr. Godson.

Swansea, Mr. Justice Williams.—The Duke of Beaufort v. The Mayor, Aldermen, and Burgesses of Swansea—Attorney General.

Moved after the 4th day of Easter Term, 1848.

Middlesex, Mr. Baron Alderson.—Arnold v. Ryan—Mr. Serjt. Wilkins.

Middlesex, Mr. Baron Alderson.—Glen v. Dungey and another—Mr. Pearson.

Moved Trinity Term, 1848.

Middlesex, Lord Chief Baron.—Gaylard v. Morris and another—Mr. Watson for deft. Robert Morris.

Middlesex, Lord Chief Baron.—Greville v. De Rutzen—Mr. Humfrey.

Middlesex, Mr. Baron Platt.—Dent v. Jackson—Mr. Watson.

London, Lord Chief Baron.—Campbell v. Pepper—Mr. Lush.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, OCTOBER 28, 1848.

‘Quod magis ad nos

Pertinet, et noscire malum est, agitamus.’

HORAT.

## THE MAGISTRACY AND THE QUARTER SESSIONS.

THE Quarter Sessions throughout the kingdom commenced last week, and have, by this time, nearly terminated in all the counties. The amount of business, civil and criminal, disposed of, we have been informed, fell rather below the usual average at the Michaelmas Quarter Sessions, but the diligence of the magistrates who presided at those Sessions was severely taxed, and their understandings and patience sorely tried, by the flood of new enactments which the legislation of the last three months has produced. Within that short interval, numerous and important alterations have been introduced in almost every branch of the law relating to the varied and complicated duties of a justice of the peace.

In addition to the two acts introduced by the Attorney-General, for regulating and defining the duties of Justices of the Peace out of Sessions, and in Petty Sessions<sup>a</sup>—which two acts, by the way, contain no less than seventy-four sections—and which came into operation on the 2nd October instant, the magistrates assembled at the Quarter Sessions last week had to exercise their judgments for the first time, in respect of the provisions of two statutes effecting considerable alterations in the powers exercised by the Magistrates at Quarter Sessions in

criminal cases, both of which statutes received the Royal Assent so recently as the month of August last. We allude to the Act “for the Removal of Defects in the Administration of Criminal Justice,” (11 & 12 Vict. c. 46);<sup>b</sup> and to the Criminal Appeal Act, (11 & 12 Vict. c. 78),<sup>c</sup> which gives the justices at Quarter Sessions the power, for the first time, of reserving questions of law arising in criminal trials, for the consideration of the judges. The Criminal Justice Amendment Act, though it took effect from the time of its passing, (14th August,) can yet have come practically into operation in very few instances. The enactments are, for the most part, rather permissive than mandatory, and the Clerks of Indictments throughout the kingdom have not yet, we believe, been directed to avail themselves of the statutory provisions of the 3rd section, which, as our readers will perceive, in an indictment for stealing property, permits a count to be added for receiving the same property knowing it to be stolen, without obliging the prosecutor to elect between the one count and the other. The amendment introduced into the practice of Courts of criminal jurisdiction, by this enactment, is so obvious, and withal so well calculated to promote the ends of justice, that we expect hereafter to find the practice uniformly established of adding a count for receiving to an indictment for stealing property, and a count for stealing to an indict-

<sup>a</sup> 11 & 12 Vict. cc. 42 & 43, which see *ante*, pp. 357 to 400, and 417 to 421.

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<sup>b</sup> See *post*, p. 519. <sup>c</sup> Printed *ante*, p. 403.

ment for receiving stolen property. The 4th section of the 11 & 12 Vict. c. 46,<sup>d</sup> which gives Courts of Oyer and Terminer and General Gaol Delivery, the power in criminal trials of ordering amendments, where variances arise between writings produced in evidence and the recital thereof in the indictment or information, does not extend to Courts of Quarter Session; and until these Courts are presided over universally by chairmen of professional education and practical legal experience, perhaps it is expedient that they should not be invested with such a discretionary power. There is no reason why the power given to the Quarter Sessions, under the 11 & 12 Vict. c. 78,<sup>e</sup> should not have been exercised at the Sessions which have lately terminated as well as at any future Sessions, beyond this, that the act does not point out with any satisfactory precision the manner in which the justices are to exercise the power now given to them. The 2nd section provides, that the judge, commissioner or Court of Quarter Sessions, shall state, "in a case signed in the manner now usual," the questions of law which shall have been reserved, with the special circumstances upon which the same shall have arisen, "and such case shall be transmitted to the said justices and barons;" but it is left to the magistrates attending at the Sessions to determine who is to draw up the case, as well as who is to transmit it. When the Sessions have granted a case heretofore, as our readers are aware is frequently done upon questions of parochial settlement and rating, the case is uniformly prepared by the counsel for the contending parties, and, in the event of any difference as to the facts, settled by the chairman, and is then transmitted to the Court of Queen's Bench upon certiorari. This is the only "usual" course known to the Court of Quarter Sessions, but it has no practical analogy to the reservation of a question of law in a criminal trial. In criminal cases at the Quarter Sessions, there is often no counsel either for the prosecution or the prisoner, no writ of certiorari lies, and if the Chairman of Quarter Sessions, or the Clerk of the Peace, were ever so well inclined to volunteer and undertake the onerous duty of framing a case and transmitting it, there is no officer named in the act to whom it should be forwarded. In this, as in many other cases, the want of a functionary, discharging the duties of a minister of jus-

tice, and superintending the administration of the law in all its details, is strikingly apparent.<sup>f</sup>

But the two criminal statutes to which we have adverted, form a very inconsiderable portion of the new law to be administered by justices of the peace. Between Midsummer and Michaelmas in the present year, no less than six distinct acts of parliament have been passed, relating to the relief, removal, management, and maintenance of the poor, all of which demand the attentive consideration of magistrates, and suggest novel questions for their determination. The first of these acts, taking them in their order, is the Poor Removal Orders Act, (11 & 12 Vict. c. 31),<sup>g</sup> the object of which, as our readers are aware, is to prevent expensive and useless litigation, by granting such powers to the justices at Quarter Sessions as will enable them to decide appeals against orders of removal, upon the merits rather than upon technical objections. This statute materially alters the practice with regard to removals and appeals. Copies of the examinations are no longer to accompany the order of removal, as directed by the 4 & 5 W. 4, c. 76, s. 79, but instead the parish authorities are to send with the order of removal a notice of chargeability and a notice of the grounds of removal. When it is intended to appeal, the appeal must be directed against the order, and in ordinary cases notice of appeal must be given within 21 days after the transmission of the notice of chargeability and of the grounds of removal; but the parish to which the pauper is ordered to be removed may require a copy of the depositions upon which the order of removal is founded, and in that case a further period of fourteen days is allowed to appeal after the sending of the copy of deposition. Four other acts, with reference to the poor, were introduced and passed in the last Session, under the superintendence of Mr. Charles Buller, the Chairman of the Poor Law Commission. These acts are cited as the 11 & 12 Vict. cc. 82, 91, 110, & 114. They relate, 1st, to the formation of districts and provision for the education of the infant poor; 2ndly, The payment of debts and audit of parochial accounts; 3rdly, Regulations for the relief and burial of casual poor and of paupers

<sup>f</sup> See the observations on the proposed appointment of a Minister of Justice, *ante*, p. 457.

<sup>d</sup> *Post*, p. 520.

<sup>e</sup> Printed *ante*, p. 403.

<sup>g</sup> Printed *ante*, p. 298.

rendered irremovable by the 9 & 10 Vict. c. 66; and lastly, additional powers given to the boards of guardians, to assist in the emigration of poor persons, to cause a valuation of property alleged to be rateable to the relief of the poor, and to obtain orders of maintenance upon relations liable to maintain poor persons. These statutes contain two provisions of great public and general importance, the future effect of which may possibly be materially to reduce the number of Poor Law appeals at Quarter Sessions. It is provided, that where appeals are brought against the poor rates of several parishes, at the same time, all of which appear to involve one common principle, the respondent parishes, subject to the approval of the Poor Law Board, and with the consent of their respective vestries, may enter into an agreement mutually to bear the costs of such appeals: in other words, several parishes may *club* to try an appeal involving some question in which all are interested. It is also provided, that when any question arises between two parishes comprehended in the same union, as to the liability to maintain any pauper rendered irremovable by the 9 & 10 Vict. c. 66, instead of resorting to the ordinary procedure by appeal, the parishes, if they think fit, may refer the question in dispute to the determination of the Poor Law Board.

There is one other Poor Law Act of the last Session deserving of notice, and which we have reason to know has already come under the consideration of more than one of the Courts of Quarter Sessions. We refer to the act 11 & 12 Vict. c. 111. This statute appears to have been passed with the limited, but very necessary object of explaining one of the provisos contained in the Poor Removal Act, 9 & 10 Vict. c. 66. This act, the provisions of which have created much doubt, confusion, and dissatisfaction, our readers will remember, enacted in the first place:—

“That from and after the passing of this act, no person shall be removed, nor shall any warrant be granted for the removal of any person from any parish in which such person shall have resided for five years next before the application for such warrant.”

Then followed two provisos, the last of which is framed in the vague terms following:—

“Provided always, that whenever any person shall have a wife or children, having no other settlement than his or her own, such wife and children shall be removable whenever he or

she is removable, and shall not be removable when he or she is not removable.”

The exact intention of the legislature in this proviso created considerable doubts. Great uncertainty prevailed as to its effect, and it was therefore deemed expedient to correct this somewhat unintelligible legislative provision by repealing it, and substituting another. Accordingly, the statute 11 & 12 Vict. c. 111, repeals the above proviso, and in lieu thereof enacts as follows:—

“Provided always, that whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable from any parish or place from which he or she would be removable, notwithstanding any provisions of the said recited act, (9 & 10 Vict. c. 66,) and should not be removable from any parish or place from which he or she would not be removable by reason of any provision in the said recited act.”

Whether the substituted proviso is less ambiguous or more intelligible than that it is intended to replace, our readers will judge. We are inclined to apply the language of the late Lord Byron to this last specimen of deliberate perspicuity, and to wish the legislative bodies would be so kind as “to explain their explanation.” At all events, it must be admitted that the last quarter has produced enough of novelty in Sessions law to satisfy the most ardent lover of legal change, and that the magistrate—paid or unpaid—who has mastered the numerous and varied enactments to which we have adverted, cannot have been wanting either in capacity or industry.

The following is the Act “for the removal of Defects in the Administration of Criminal Justice,” 14th August, 1848, 11 & 12 Vict. c. 46. It recites that—

“The technical strictness of criminal proceedings might in some instances be further relaxed, so as to ensure the punishment of the guilty, without depriving the accused of any just means of defence: And that it is expedient to make further provision for the more effectual prosecution of accessories before and after the fact to felony: And that it is also expedient that any accessory before the fact to felony should be liable to be indicted, tried, convicted, and punished in all respects like the principal, as is now the case in treason and in all misdemeanors: It is therefore enacted, That from and after the passing of this act, if any person shall become an *accessory before the fact* to any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, such

person may be indicted, tried, convicted, and punished in all respects as if he were a principal felon.

“3. *Accessories after fact.*—And whereas an accessory after the fact to felony can at present be tried only along with the principal felon, or after the principal felon has been convicted, and not otherwise, which is sometimes productive of a failure of justice; be it therefore enacted, That from and after the passing of this act, if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, he may be indicted and convicted either as an accessory after the fact to the principal felony together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony if convicted as an accessory may be punished, and the offence of such person, howsoever indicted, may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon in the same manner as if the act by reason of which such person shall have become an accessory had been committed at the same place as the principal felony: Provided always, that no person who shall be once duly tried for any such offence, whether as an accessory after the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

“3. *Counts for stealing and receiving stolen property.*—And whereas, according to the present practice of Courts of criminal jurisdiction, it is not permitted in an indictment for stealing property to add a count for receiving the same property knowing it to have been stolen, or in an indictment for receiving stolen property knowing it to have been stolen to add a count for stealing the same property, and justice is hereby often defeated; be it therefore enacted, That from and after the passing of this act, in every indictment for feloniously stealing property it shall be lawful to add a count for feloniously receiving the same property, knowing it to have been stolen, and in any indictment for feloniously receiving property knowing it to have been stolen it shall be lawful to add a count for feloniously stealing the same property; and where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either of stealing the property or of receiving it knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of re-

ceiving it knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it knowing it to have been stolen.

4. *Amending indictments.*—And whereas a failure of justice frequently takes place in criminal trials by reason of variances between writings produced in evidence and the recital or setting forth thereof in the indictment or information, and the same cannot now be amended at the trial, except in cases of misdemeanor; for remedy thereof be it enacted, That it shall and may be lawful for any Court of Oyer and Terminer and General Gaol Delivery, if such Court shall see fit so to do, to cause the indictment or information for any offence whatever, when any variance or variances shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof in the indictment or information whereon the trial is pending, to be forthwith amended in such particular or particulars by some officer of the Court, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance or variances had appeared,

“5. This act not to extend to Scotland.”

#### CONTRACTS IN CONTRAVENTION OF STATUTORY ENACTMENTS.

SEVERAL cases have been recently reported, illustrating the rule of law, that a contract entered into in contravention of a statutory provision, whether the prohibition be express or implied from the imposition of a penalty, will not support an action, to some of which cases it may not be unimproving now to refer.

The most striking perhaps of these decisions was that in *Cundell and another v. Dawson*,<sup>b</sup> where the plaintiffs sued in debt for the value of a large quantity of coals sold and delivered to the defendant within the city of London; and the defendant pleaded that the plaintiffs, being the sellers, did not deliver to the defendant, before such coals were unloaded, a ticket containing the quantities of coals according to the required form, signed by the plaintiffs with their names in words at full length, according to the statute. This plea was founded on the statute 1 & 2 Vict. c. 101, (continued by the 8 & 9 Vict. c. 101,) regulating the vend and delivery of coals in the metropolis, and enacting by the 3rd section:—

"That with any quantity of coals, exceeding 560 pounds, delivered by any cart, waggon, or other carriage, within the cities of London and Westminster, or within 25 miles from the General Post-office, the seller should deliver or cause to be delivered to the purchaser, or to his agent or servant, immediately on the arrival of the cart, waggon, or other carriage, in which such coals should be sent, and before any of such coals should be unloaded, a ticket, according to a certain form, and that in case any such seller should not deliver or cause to be delivered such ticket as aforesaid to the purchaser of such coals, or to his agent or servant, before any part of such coals were unloaded, every such seller should, for every such offence, forfeit and pay any sum not exceeding 20*l*."

By the form prescribed, the ticket was required to be signed with the names of the sellers, and that of the carman, in words at full length. The plea was demurred to, and the main question arising upon this demurrer was, whether the plaintiffs were precluded from recovering the price of the coals delivered by them to the defendant, by reason of their having omitted, previous to such delivery of coals, to deliver to the defendant, or some one on his behalf, the ticket referred to in the statute, stating the quantity and description of the coals about to be delivered?

On the part of the plaintiffs, it was submitted, that the disregard of the regulation referred to in the plea, although it subjected the vendors of the coals to a penalty, did not vitiate the contract, because no infringement of the law was contemplated by the contract. On the other hand, it was insisted, that wherever a statute imposes a penalty for the non-compliance with a condition precedent, a prohibition is implied, and no contract upon which such prohibition attaches can be enforced in a Court of justice. The Court, considering the diversity of *dicta* and decisions on the subject, took time to deliberate upon its judgment, which was afterwards delivered by the Chief Justice. It was observed, in the first place, that there are two distinct classes of statutes, raising questions as to the right to recover the price of goods by sellers who have not complied with statutory provisions. One class of statutes had for their objects the security of the revenue, and the cases on the construction of these statutes rested upon principles inapplicable to the present case. The other class of statutes was directed to the protection of buyers and consumers, and the decisions upon those statutes governed the present case,<sup>1</sup> as the provisions of the

1 & 2 Vict. c. 101, were obviously meant to secure the purchasers of coals from fraud in respect of the quantity and quality of the coals, for the attainment of which object the delivery of the ticket was required, which the plaintiff had omitted to deliver. The policy of the act being to protect the buyer against the seller, it would be best effected by holding that a seller of coals could not recover the value of them when he had omitted to deliver a ticket pursuant to the statute. The Court was therefore of opinion that the plea furnished a sufficient answer to the declaration, and gave judgment for the defendant.

Very shortly after the determination of the case of *Cundell v. Dawson*, the Court of Common Pleas was called upon to decide another case arising upon a different class of statutes. In this case,<sup>k</sup> the plaintiff sought to recover 50*l*. in an action upon an agreement, which recited that he had for a long time carried on business as a law stationer, and also had been a sub-distributor of stamps and collector of assessed taxes, and that in consideration of 300*l*., payable by instalments, the plaintiff agreed to sell and the defendant to purchase the business of a law stationer; and it was thereby further agreed between them, that after a day then specified, the plaintiff should not carry on the business of a law stationer, or collect any of the assessed taxes, but would use his utmost endeavours to introduce the defendant "to the said business and offices." The agreement was set forth in the declaration, upon the validity of which the question arose. It was submitted, on behalf of the defendant, that the agreement was doubly void by statute, being within the direct words of the 5 & 6 Edw. 6, c. 16, "Against buying and selling of offices;"<sup>l</sup> and in contravention of the 49

and *Little v. Poole*, 2 B. & Cres. 192, were especially relied upon by the Court, and it was said these decisions were consistent with many other cases enumerated.

<sup>k</sup> *Hopkins v. Prescott*, reported 16 Law Jour. N. S. 259, C. P.

<sup>l</sup> The 2nd sect. of which enacts that:—"If any person or persons shall at any time hereafter bargain or sell any office or offices, &c. or receive, have, or take any money, fee, reward, or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward, or other profit, directly or indirectly, for any office or offices, &c., or to the intent that any person should have, exercise, or enjoy, any office or offices, &c., which office or offices shall in anywise touch or concern the receipt,

<sup>1</sup> The cases of *Law v. Hodson*, 11 East, 300,



Geo. 3, c. 126,<sup>m</sup> “for the further prevention of the sale and brokerage of offices.” It was admitted, for the plaintiff, that a contract for the sale of an office alone is void, but it was contended, that if there be other things to be done included in the contract, unconnected with and independent of the sale of an office, the contract is good. Here it was suggested that the sale of the business of a law stationer was a sufficient consideration for the 300*l.*; and that the offices were referred to merely as collateral advantages to be derived by the purchaser. It was also submitted, that the agreement disclosed in the declaration was not illegal, because it was only an agreement not to collect, and to use utmost endeavours to introduce the defendant to business and offices, which should be understood to mean “utmost legal endeavours.”

The Court was unanimously of opinion, that the declaration disclosed a contract within the stat. 5 & 6 Edw. 6, c. 16. The agreement was entire, though it contained several distinct parts, and the consideration was entire, for it was impossible for the Court to say that any part of the 300*l.* was referable to one part of the agreement, and the residue of the 300*l.* to the other part. The clear intention of the parties was, that the plaintiff was to give up the office of collector of assessed taxes, in order that the defendant might get it. That was an agreement relating to the payment of the revenue and within the statutes. The plaintiff therefore failed in disclosing a valid cause of action, and the defendant was entitled to judgment.

The two cases more particularly referred to, arising upon statutes comprehended in distinct classes, exemplify the principle upon which the Courts of law proceed, in every instance, where the intention of the legislature is plainly and unequivocally expressed.

controlment, or payment of the king's highness' treasure, money, rent, revenue, account," &c., all persons trafficking in, bargaining, or selling such offices, shall be subject to certain personal disqualifications; and sect. 3 enacts,—“That all and every such bargains, sales, promises, bonds, agreements, covenants and assurances, as be before specified, shall be void, to and against him and them by whom any such bargain, sale, bond, promise, covenant, or assurance shall be had or made.”

<sup>m</sup> The 3rd sect. of this act provides that,—“Persons buying, or selling, or receiving or paying, money or rewards for offices, may be proceeded against as for a crime, and adjudged guilty of misdemeanor.”

## THE STATUS OF ATTORNEYS.

WE have been favoured with a letter from Leeds, consequent upon our inviting communications on the subject of a letter relating to “the Bar and the Attorneys” which appeared in a recent number. See p. 439, *ante*.

We cannot agree with our correspondent in his statement, that solicitors, saving some exceptions, are excluded from parties of gentlemen. We think the rule is the other way: they are admitted equally with the members of the other learned professions, except in individual instances. In the too large number of practitioners both in town and country it cannot be denied that there are several who would be excluded on account of their personal, not their professional character. Noblemen associate with their solicitors as freely as with their clerical or medical friends.

With respect to the proposed Clubs in each town, for enrolling every respectable member of the profession, and excluding those of objectionable practice, we think the purpose would be better answered by the extension of all the existing Law Societies, and the formation of others, as recommended by the Incorporated Law Society and the Metropolitan and Provincial Law Association. Doubtless the best means of raising the station of the attorney are *fair and honourable practice*, (which all the Law Societies are pledged to promote,) and gradual *improvements in legal education*, towards which several important steps have been taken.

The following is the letter:—

*To the Editor of the Legal Observer.*

“Sir,—In a late number of your Observer are some observations, to the effect, that the Bar, many of whom have seats in Parliament, have not sufficiently considered the interests of solicitors, and you invite correspondence on the subject.

“The best friend of solicitors is he who will tell them the truth as to their position in society, however unpalatable the truth may be.

“The truth is, that the legal profession, both barristers and solicitors, has been for many years past gradually losing ground in the estimation of the public; neither branch of the profession stands so high as 25 years ago.

“It is sufficient, for the present purpose, if I confine my observations to solicitors.

“I find then, that, with some exceptions, it is not considered etiquette to ask a solicitor to meet a party of gentlemen at dinner. By gentlemen, I mean the clergy, barristers, military, and naval men, and squires or gentlemen living on their own means.

“Whence arises this alarming fact? Is it that the solicitors, as a body, are not gentlemen, or not fit to associate with gentlemen? I answer emphatically, that as a body, they are gentlemen, and intelligent gentlemen too, fit to associate with any men in the world.

“But there are exceptions. Some few solicitors are given to shabby practices, and mean shifts; it is found that their word cannot be relied upon;—they do not appear to know the value of truth; in short, they have not the feeling of gentlemen.

“But, it will be asked, why is the great body to suffer for the misconduct of the few?

“The reason is, that *the men of good character do not take sufficient pains to separate themselves from the men of bad character.*

“‘Tell me who your associates are, and I will tell you who you are?’ is a Spanish proverb.

“If the respectable portion of the solicitors appear to the public to be hand and glove with the bad, the public will conclude that they are all alike—all birds of a feather—and all to be treated alike: thus the position in society of the general body will be, as it is, lowered.

“It remains with the solicitors to effect the separation—to mark the black sheep; it is for the solicitors to consider how this may be effected.

“I apprehend it might easily be done. For instance, one plan might be the institution of clubs in each town, each holding communications with the others and with some central club, such central club to be in London, or any great city to be fixed upon.

“To this club the subscription should be nominal, say 2s. 6d. a year, to pay for pens and paper, &c. It should exclude all party and political features, and its principle should be, that only honest men should be admitted members, and then the exclusion of certain others would sufficiently mark to the public the black sheep of the particular district.

“Whether or not this plan would work well, I know not. But the fact which I have stated is alarming; and it is for the solicitors, as a body, to bestir themselves to remove the stigma.

“AMICUS VERUS.”

## JUDICIAL INDEPENDENCE IN AMERICA.

ALTHOUGH in appearance this is generally established, it is in reality almost unknown in America, but integrity of judicial character is, to their honour be it said, universal. All the state judges, from the highest to the lowest, are virtually elected by the people, and are by them liable to be displaced, for they are appointed by the state legislature, who are themselves nominated by universal suffrage.

Their tenure of office is, in thirteen states, during good behaviour; in eight they preside during a period of not less than seven years;

in some instances these periods are from 12 to 15 years. In two states they hold office but for one year. In one instance they are appointed directly by the people. In 13 states they are appointed by the legislatures, in 12 by the governors with the advice of a senate or council.

They are removable only by impeachment, or, in some instances, by an address of both branches of the legislature, for which usually the votes of two-thirds or three-fourths of the house must concur,—that is manifestly *by one interest* in society, viz., the majority in number, and not as in Britain, by the Crown and by votes of both Lords and Commons.

If their decisions are obnoxious to the feelings, however excited, of the multitude, they are sure not to be re-elected. Those of the highest talent at the bar rarely, from this cause, condescend to accept judicial appointments, and consequently the ability of the bench is generally unequal to that of the counsel, and their station in life inferior!

I subjoin the salaries paid to the judges supreme and inferior in America.—

|                             |          |
|-----------------------------|----------|
| Chief Justice Supreme Court | . £1,050 |
| Ordinary judges             | . 900    |
| Chief judge at New York     | . 400    |
| North Carolina              | . 400    |
| South Carolina              | . 600    |
| Pennsylvania                | . 500    |
| Ohio                        | . 200    |
| Missouri                    | . 400    |

and the others in proportion.

No suspicion attaches to their judgments, and justice is impartially administered in questions at least between man and man.—*North American Review*. No. 119, p. 394. *Stat. alm.*, 1841, p. 64. *Atison's Europe*, vol. 19, p. 65.

## MICHAELMAS TERM EXAMINATION.

THE Notices of Admission on the Roll of Attorneys for the ensuing Term are 207; but of these applicants, 45 have been already examined. There are some in addition who have given Examination but not Admission Notices. The actual number entitled to be examined is 168; but allowing the usual proportion for such as are unable to complete their Testimonials of Service, or may be hindered from attending for various causes, illness, want of preparation, &c., &c., the number will probably be reduced to 125, or perhaps less.

The List of Michaelmas Term is generally larger than any other, and we must deduct a due proportion for the rejected, for several who seek their fortunes in the Colonies, and for many who continue in the offices of solicitors and do not practise on their own account. The actual increase to the ranks of the profes-

sion is not therefore too large. Indeed the number entitled to take out their certificates for the ensuing year is about 300 less than the former year. The examination will take place on Tuesday, 14th November.

**SUGGESTED IMPROVEMENTS IN THE LAW AND PRACTICE.**

**EXPENSE OF BANKRUPTCY FIATS.**

THE enormous fees to be disbursed on a fiat in bankruptcy, amounting to no less than 41*l.*, prevent the winding up of small estates through that channel. It appears there is a large surplus fund. Why should not the fees be reduced?

**RESPONSIBILITY OF EXECUTORS.**

The recent Act for the Relief of Trustees by paying the Fund into Court, suggests the desirableness of an Act to enable Executors to pass their Accounts in a summary way before a Master or a Commissioner, giving notice to the parties beneficially interested or their representatives.

**DEEDS INSUFFICIENTLY STAMPED.**

When it is discovered at a trial that a deed which is offered in evidence has been insufficiently stamped, the party should be at liberty to deposit with the officer of the Court a sum sufficient to pay the extra duty, with a penalty, to be fixed by the Court, and a proper fee to the officer.

**REVISION OF STAMP ACT.**

A just and equitable alteration of the duties imposed under the Stamp Act, (to which we have often adverted,) would produce an equal, if not a greater, amount of revenue, and enable the government not only to relieve the attorneys and solicitors, proctors, notaries, and conveyancers from the present Annual Certificate Tax, but confer advantage on other large classes of the community in their various dealings and transactions.

**LIST OF LOCAL AND PERSONAL ACTS.**

11 & 12 VICT.

DECLARED PUBLIC,

AND TO BE JUDICIALLY NOTICED.

[*Concluded from p. 506, ante.*]

to make a Railway to Barnsley, with Branches therefrom, all in the West Riding of the county of York.

64. An Act for enabling the Manchester, Sheffield, and Lincolnshire Railway Company to make improved Communications to their Station in Manchester.

65. An Act to authorize the South Yorkshire, Doncaster, and Goole Railway Company to construct a Branch Railway to the Great Northern Railway at Doncaster.

66. An Act to authorize certain Alterations of the North Staffordshire Railway.

67. An Act to enable the Aberdeen Railway Company to raise a further Sum of Money.

68. An Act for enabling the Leeds and Thirsk Railway Company to make a Railway by Harrogate to Pateley; and for other purposes.

69. An Act to enable the Manchester, Sheffield and Lincolnshire Railway Company to carry the Line of their Railway across Sheffield Street in Manchester, to increase their Station Accommodation at Manchester and Stalybridge, and for other purposes.

70. An Act to enable the Edinburgh and Glasgow Railway Company to make certain Branches, and to alter the Tunnel at Glasgow; and for other purposes.

71. An Act for making a Railway Station on the North Side of the River Aire in Leeds in the West Riding of the county of York, to be called "The Leeds Central Railway Station."

72. An Act to enable the Scottish Midland Junction Railway Company to make Branch Railways to Birnam and to the Dunkeld Branch of the Scottish Midland Junction Railway, and also to abandon Portion of the original Line of the said Dunkeld Branch.

73. An Act to enable the Caledonian Railway Company to improve the Glasgow, Garnkirk, and Coatbridge and the Clydesdale Junction Railways.

74. An Act for making a Railway from the Berks and Hants Railway at Hungerford to join the Line of the Wilts, Somerset, and Weymouth Railway at Westbury and Devizes.

75. An Act for authorizing certain Deviations in the Line of the Windsor, Staines, and South-western Railway.

76. An Act to make a Deviation in the authorized Line of the Midland Great Western Railway of Ireland, and to amend the Acts relating to the Company.

77. An Act to enable the Bristol and Exeter Railway Company to make a Branch Railway from the Bristol and Exeter Railway in the parish of Bleadon to the city of Wells, the town of Glastonbury, and the parish of Street, all in the county of Somerset.

78. An Act to enable the Glasgow, Paisley, and Greenock Railway Company to make a certain Railway; and to amend the acts relating to the said Railway.

79. An Act to authorize the abandonment of a Portion of the Londonderry and Euniskillen Railway, and the Enlargement of the intended Station at Londonderry; and for other purposes.

63. An Act for enabling the Manchester, Sheffield, and Lincolnshire Railway Company

80. An Act to enable the Whitehaven Junction Railway Company to extend their Railway from the present Terminus thereof at Whitehaven to the Patent Slip Yard in Whitehaven, to make branches to Whitehaven Harbour, to deviate the Line at Parton, and to alter, enlarge, and extend the Company's Stations, Railways, and Works; and for other purposes.
81. An Act for enabling the Hartlepool Dock and Railway Company and the Great North of England, Clarence, and Hartlepool Junction Railway Company to lease their respective Railways and Works to the York, Newcastle, and Berwick Railway Company.
82. An Act to enable the Bristol and Exeter Railway Company to make a Branch Railway from the parish of Lyng, near the town of Taunton, to join the Wilts, Somerset, and Weymouth Railway, near Castle Cary, in the County of Somerset.
83. An Act for making a Branch Railway from the Churnet Valley Line of the North Staffordshire Railway in the parish of Rochester, in the county of Stafford, to Ashbourne, in the county of Derby.
84. An Act to regulate the Charges for the Conveyance of Traffic on the Glasgow, Paisley, Kilmarnock, and Ayr Railway, and for other purposes.
85. An Act for making a Railway from Exeter to Yeovil, with Branches and an Extension therefrom, to be called "The Exeter, Yeovil, and Dorchester Railway."
86. An Act for vesting in the Manchester, Sheffield, and Lincolnshire Railway Company the Canal Navigation from Manchester to or near Ashton-under-Lyne and Oldham.
87. An Act to enable the London and South-western Railway Company to make a Railway from Salisbury to Yeovil, with Branches to Shaftesbury, and to the Exeter, Yeovil, and Dorchester and Wilts, Somerset, and Weymouth Railways.
88. An Act to enable the Midland Railway Company to make certain Branches from and Enlargements of their Railway; and for other purposes.
89. An Act for amalgamating the Southampton and Dorchester Railway Company with the London and South-western Railway Company.
90. An Act to amend the Acts relating to the London and Blackwall Railway, and to authorize the Company to alter the Gauge of their Railway, and to make certain Improvements in the Approaches to the said Railway, and to make Branches to the London and Saint Katherine's Docks.
91. An Act to enable the Whitehaven Junction Railway Company to raise a further Sum of Money; and to amend the Act relating to the said Railway.
92. An Act for improving the Steam Communication across the River Humber belonging to the Manchester, Sheffield, and Lincolnshire Railway Company; for erecting a Pier at Kingston-upon-Hull, and enlarging the Works at New Holland; for making a connecting Line near Habrough in the County of Lincoln;
- for regulating the Pilotage of the Port of Great Grimsby; and for amending the Acts relating to the Manchester, Sheffield, and Lincolnshire Railway Company.
93. An Act to enable the Manchester, Sheffield, and Lincolnshire Railway Company to construct an additional or enlarged Station at Sheffield, and to make a Branch Railway to the Sheffield Canal.
94. An Act for vesting in the Manchester, Sheffield, and Lincolnshire Railway Company the Sheffield Canal.
95. An Act to enable the Plymouth Great Western Dock Company to raise further Capital, and to authorize the Great Western, Bristol and Exeter, and South Devon Railway Companies to subscribe to the Plymouth Great Western Docks; and for other purposes.
96. An Act to amend the Acts relating to the Newry Navigation.
97. An Act to enable the Warden and Assistants of the Harbour of Dover in the county of Kent to raise a further Sum of Money.
98. An Act to improve the Harbour of Burntisland in the County of Fife.
99. An Act for constructing a Harbour at Leck Robie, and for maintaining the Harbour of Little Ferry, both in the County of Sutherland.
100. An Act for establishing a general Cemetery for the Interment of the Dead in the Parish of Saint Mary on the Hill in the City of Chester.
101. An Act to alter, amend, and enlarge the Powers and Provisions of "The Manchester Corporation Waterworks Act, 1847."
102. An Act to amend, extend, and enlarge the Powers of an Act passed in the Session of Parliament held in the 5th and 6th years of the Reign of her present Majesty, intituled "An Act for better lighting, cleansing, sewerage, and improving the Borough of Leeds in the County of York;" and to give to the Mayor, Aldermen, and Burgesses of the said Borough further and more effectual Powers for draining and sewerage the said Borough.
103. An Act for dissolving and facilitating the Winding-up of the Affairs of "The Patent Galvanized Iron Company," trading under the Firm or Style of Malins and Rawlinsons.
104. An Act to amend the Acts for improving the Drainage and Navigation of the Middle Level of the Fens, and for other purposes connected therewith.
105. An Act to enable Low's Patent Copper Company to work certain Letters Patent.
106. An Act for incorporating the Scottish Provident Institution, for confirming the Laws and Regulations thereof, for enabling the said Society to sue and be sued, to take and to hold Property; and for other purposes relating to the said Society.
107. An Act to amend and continue the Term of an Act passed in the 57th year of the Reign of his late Majesty King George the Third, intituled "An Act to continue the Term

of an Act passed in the Parliament of Ireland in the 35th year of his present Majesty, for improving and repairing the Turnpike Road leading from Dublin to Mullingar, and for repealing the several Laws heretofore made relating to the said Road."

108. An Act for authorizing the Trustees of the Tadcaster and Halton Dial Turnpike Road to make a Diversion or Alteration of such Part of the Line of the Tadcaster and Halton Dial Turnpike Road as lies in the parish of Tadcaster in the West Riding of the County of York.

109. An Act to enable the President, Vice-Presidents, Treasurer, and Members of the Philanthropic Society to sell and grant Leases of the Lands belonging to them, and to purchase other Lands; and for other purposes relating to the said Society.

110. An Act to incorporate the Members of the Institution called "The Orphan Working School," now established at Haverstock Hill, Hampstead Road, in the county of Middlesex, and to enable them the better to carry on their charitable designs.

111. An Act to alter and amend some of the Provisions of the Acts relating to the London and Blackwall Railway Company.

112. An Act to enable the Edinburgh and Northern Railway Company to make Branch Railways to Roscobie, Keltyhead, and Glen-craig; and for certain other purposes.

113. An Act for more effectually watching, cleansing, and lighting the Streets of the city of Edinburgh and adjoining Districts, for regulating the Police thereof, and for other purposes relating thereto.

114. An Act to amend the Acts relating to the Great Northern Railway Company; and to enable the Company to make an Extension of their Railway from the parish of Saundby in Nottinghamshire to the Askern Branch of the Wakefield, Pontefract, and Goole Railway in the parish of Owston in the West Riding of Yorkshire, with a Branch to rejoin the Great Northern Railway in the Parish of Snaith in the said West Riding.

115. An Act for enabling the Lancashire and Yorkshire Railway Company to make certain Modifications of their Share Capital; and for other purposes.

116. An Act to enable the Edinburgh and Bathgate Railway Company to extend their Whitburn Branch, and to alter or deviate their Uphall and Binnie Branch.

117. An Act to authorize a Deviation in the Line of the Londonderry and Coleraine Railway, and to amend the Act relating thereto.

118. An Act to facilitate the Construction of the Cowlairs Branch of the Glasgow, Airdrie, and Monklands Junction Railway by the Edinburgh and Glasgow Railway Company, and to grant further Powers to that Company.

119. An Act to enable the Royston and Hitchin Railway Company to extend their Line of Railway from Royston to Shepreth, and to make a Deviation of the authorized Line at Hitchin.

120. An Act to amend the Provisions of the Newport and Pontypool Railway Act, 1845.

121. An Act to enable the Caledonian Railway Company to extend their Railway across the River Clyde at Glasgow, and to form a Station in that City.

122. An Act for the Amendment and Continuation of the Burgh Customs, and Water, Shore, and Harbour Rates, of the Burgh of Dunbar, and for other purposes connected with the said Burgh, and the Supply of Water to the same, and the Harbour thereof.

123. An Act to provide for the Municipal and Police Government of the Burgh of Leith, and for other purposes relating thereto.

124. An Act for the better carrying on the Affairs of the Gand Canal Company.

125. An Act for enabling the London and South-western Railway Company to effect certain Extensions and Deviations at Godalming, Cosham, London Bridge, Southampton, and Poole, and certain arrangements respecting Steam Packets; and for other purposes.

126. An Act to enable the Furness Railway Company to raise a further Sum of Money, and to purchase Steam Vessels, and for the Amendment of the Acts relating to the said Company.

127. An Act to authorize certain Deviations in the Main Line of the Stirling and Dunfermline Railway, and for other purposes.

128. An Act to enable the Whitehaven and Furness Junction Railway Company to deviate or extend their line of Railway from Silcroft to Foxfield, and to abandon a portion of their Line between Silcroft and Ireth; to make Branches to Whitehaven Harbour; and for other purposes.

129. An Act to enable the Dundee and Arbroath Railway Company to make a Junction Line of Railway into the Royal Burgh of Dundee.

130. An Act for enabling the London and North-western Railway Company to make a Branch Railway from the Coventry and Nuneaton Line, in the Parish of Exhall, to the Craven Colliery; and another Branch Railway from the same Coventry and Nuneaton Line at Bedworth to the Mount Pleasant Colliery; to construct a new Approach Road to the Station of the London and North-western Railway at Tamworth; and to enlarge the Rugby Station of the last-mentioned Railway, all in the County of Warwick; and for other purposes.

131. An Act to enable the Midland Railway Company to construct a Railway from Gloucester to Stonehouse, and for other purposes connected with the Bristol and Gloucester Line of the Midland Railway.

132. An Act to alter and amend the Acts relating to the Newry and Enniskillen Railway Company, and to enable them to make arrangements with other Railway Companies.

133. An Act to authorize an Alteration of the Line of the Oxford, Worcester, and Wolverhampton Railway; and for other purposes.

134. An Act to amalgamate the Monkland

and Kirkintilloch, Ballochney, and Slamannan Railways.

135. An Act for making a Railway from the Great Western Railway near Slough to the Town of New Windsor in the County of Berks.

136. An Act for making an Alteration in the New Cross Station; and for amending the Powers and Provisions of the several Acts relating to the London, Brighton, and South Coast Railway.

137. An Act to enable the Trustees of the Worcester Turnpike Road to make certain new Roads, and to improve and more effectually maintain the several Roads leading into and from the City of Worcester.

138. An Act for establishing a Market and Fair in the Borough of Avon, otherwise Aberavon, in the County of Glamorgan.

139. An Act for the better regulating and improving the Port and Harbour of New Ross in the counties of Wexford and Kilkenny.

140. An Act for better paving, lighting, watching, sewerage, draining, cleansing, and otherwise improving the Town and Neighbourhood of Huddersfield in the West Riding of the county of York, for maintaining an efficient Police, and removing and preventing Nuisances and Annoyances therein.

141. An Act for the Improvement of the borough of Londonderry.

142. An Act for incorporating "The West of England and South Wales Land Draining Company;" and for enabling Owners of limited Interests in Land to charge the same for the purposes of Drainage, Irrigation, Warping, Embankment, Reclamation, Inclosure, and Improvement.

143. An Act to improve the river Nene and Wisbech River, and the Drainage of Lands discharging their waters into the same.

144. An Act to alter and amend the several Acts relating to the Birkenhead Commissioners Docks, and to transfer the several Powers of the said Commissioners to a Corporate Body to be entitled "The Trustees of the Birkenhead Docks;" and for other purposes.

145. An Act for continuing the Term of an Act passed in the 8th year of the reign of his Majesty King George the Fourth, intituled "An Act for more effectually repairing and maintaining the Road from Hulme, across the river Irwell, through Salford, to Eccles, in the County Palatine of Lancaster, and a Branch of Road communicating therewith, so far as relates to the Road from Hulme to Eccles, for the purpose of enabling the Trustees to pay off the Debt now due on the said Roads."

146. An Act for altering and amending an Act passed for maintaining the Road from Crossford Bridge to Manchester, and a Branch connected therewith.

147. An Act for more effectually repairing and maintaining the Road from Richmond to Reeth in the county of York.

148. An Act to enable the Wishaw and Coltness Railway Company to divert and improve certain Portions of their Line.

149. An Act to enable "The Timber Preserving Company" to purchase and work certain Letters Patent, and for confirming the same.

150. An Act for draining, warping, and otherwise improving Thorne Moor in the West Riding of Yorkshire.

151. An Act to authorize the Endowment and Consecration of a new Chapel at Marlborough, and the Annexation of the same to Marlborough College.

152. An Act to amend the Act for the more easy Recovery of Small Debts and Demands within the city of London and the Liberties thereof.

153. An Act for the Establishment of the "Farmers Estate Society of Ireland."

154. An Act to enable the Dundee and Perth Railway Company to take a Lease of the Undertaking of the Dundee and Arbroath Railway Company, and to amend the Acts relating to such Companies respectively. ●

155. An Act for making a Railway from Paisley to Barrhead, with certain Branch Railways therewith connected, to be called "The Paisley, Barrhead, and Hurler Railway."

156. An Act to make a Deviation in the authorized Line of the Manchester, Buxton, Matlock, and Midlands Junction Railway, together with a Branch to Bakewell.

157. An Act to amend the Acts relating to the Exeter and Exmouth Railway Company.

158. An Act to enable the Great Western Railway Company to construct a Loop Line from the Birmingham and Oxford Junction Railway through the town of Leamington; and for other purposes.

159. An Act to confer additional Powers on the Great Western Railway Company with reference to an Agreement of the 12th of November, 1846, for the Purchase by them of the Birmingham and Oxford Junction, and Birmingham, Wolverhampton, and Dudley Railways.

160. An Act to enable the Edinburgh and Glasgow Railway Company to hold Shares in the Edinburgh and Bathgate Railway Company; and for other purposes.

161. An Act for the more effectually paving, lighting, watching, draining, cleansing, and otherwise improving the town and neighbourhood of Walsall in the county of Stafford, for improving the Markets, and for the better assessing the Poor's Rates, Highway Rates, Church Rates, and other Local Rates within the parish of Walsall in the said county.

162. An Act for granting further powers to the Clerkenwell Improvement Commissioners for the purpose of enabling them to complete the new Street and the Improvements connected therewith.

163. An Act to provide for the Sanatory Improvement of the city of London and the Liberties thereof, and for the better cleansing, sewerage, paving, and lighting the same.

MASTER EXTRAORDINARY IN  
CHANCERY.

*From Sept. 26th, to Oct. 20th, 1848, both inclusive, with dates when gazetted.*

Darnton, Henry Thomas, Ashton-under-Lyne. Oct. 10.

DISSOLUTIONS OF PROFESSIONAL  
PARTNERSHIPS.

*From Sept. 26th, to Oct. 20th, 1848, both inclusive, with dates when gazetted.*

Fisher, Roger Staples, and Henry De Jersey,

162, Aldersgate Street, Attorneys, Solicitors and Conveyancers. Oct. 6.

Jones, John Oliver, William Henry Trinder, Clement Tudway, and George Lewis Phipps Eyre, 1, John Street, Bedford Row, Attorneys and Solicitors, (so far as regards John Oliver Jones and Clement Tudway). Sept. 26.

Roberts, William, and Frederick William Griffiths, 12, George Street, Mansion House, Attorneys and Solicitors. Oct. 3.

Smith, Henley, Charles Alliston, and George Alliston, 4, Warnford Court, Throgmorton Street, Attorneys and Solicitors, (so far as regards the said Charles Alliston.) Sept. 29.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

*Manners v. Furze.* August 5th and 9th, 1848.

OPENING BIDDINGS.—DEPOSIT.

*There is no absolute rule requiring the whole amount of the advance obtained when biddings are opened to be paid into Court. Therefore the Court was satisfied with 10l. per cent. upon the purchase-money in a case where that sum was amply sufficient to cover the expenses.*

In this case an order had been obtained to open the biddings for certain estates "on the usual terms," upon an increase in the sum offered of 6,500*l.*, the biddings having been advanced from 27,500*l.* to 34,000*l.* On the 18th of June an order was made, that the purchaser should pay into Court 3,400*l.* (i. e. 10*l.* per cent. upon the total purchase-money, as a deposit), such being in the opinion of the registrar the usual terms upon the opening of biddings. A motion was now made to rectify this order by inserting the sum of 6,500*l.* instead of 3,400*l.*, upon the ground, that according to the practice of the Court when biddings were opened the party making the increased offer must pay in the whole advance.

Mr. Chandless, for the motion, referred to Sugden's Vendors and Purchasers, 1, 101; *Anon.*, 6 Ves. 513; *Watson v. Birch*, 2 Ves. J. 51; *Preston v. Barker*, 16 Ves. 140; and *Tyndy v. Ware*, Jacob, 523; where the registrar's books showed that the whole advance was paid in, though it was in the first case 300*l.* upon an offer of 1,500*l.*, and in the second, 600*l.* on an offer of 3,000*l.*, and therefore, in both cases, exceeded 10*l.* per cent. There was no reported case in which it ap-

peared that the Court had been satisfied with less than the whole advance.

Mr. Turner and Mr. Eusk, in opposition to the motion, contended that the object of the Court in requiring the payment of a deposit, was to obtain a sufficient sum to cover the expenses; and therefore it had adopted the rule of requiring a deposit of 10*l.* per cent. on the purchase-money. There was no necessary connexion between this object and the sum which might be required to be offered before biddings would be opened, and there could be no reason for requiring the new purchaser to make a larger proportionate advance than the original one. They referred to *Smith Ch. Practice*, II. c. 247, 2nd ed., 264, 3rd ed.; *Anon.*, 3 Mad. 494; and *Maddock Ch. Pr.* II., 502, 2nd ed., 656, 3rd ed.

Lord Langdale, after taking time to inquire into the practice, said, that as the sum in this case was so large it would be sufficient to require 10*l.* per cent. to be paid, not because the sum was 10*l.* per cent., but because it was sufficient to cover the expenses. He could not find that there was any absolute rule.

Wice-Chancellor of England.

*Pim v. Wilson.* July 5, 1848.

FIAT IN BANKRUPTCY.—INJUNCTION.—  
JURISDICTION.

*Where a bill is filed for the purpose of restraining the issuing of a fiat in bankruptcy, under stat. 1 & 2 Vict. c. 110, s. 8, and the plaintiff alleges that the defendant is not proceeding according to the act, in order to prevent the injunction from issuing, it is necessary for the defendant to answer*



that allegation, and a demurrer to the bill was overruled. The Court of Chancery will interfere to restrain the issuing of a fiat in bankruptcy, if it appears that there is a clear ground of equity against its issuing, or that the party taking out the fiat is not proceeding according to the act.

THE plaintiff Pim entered into a contract with the defendant for a certain number of railway sleepers from New Brunswick. The first consignment was paid for, but the plaintiff refused to take the remainder, on the ground that they were of an inferior quality. A bill was presented to the plaintiff for the remainder of the purchase-money, but he refused to accept it, whereupon the defendant proceeded under the stat. 1 & 2 Vict. c. 110, sec. 8, sent an affidavit of the debt over here from New Brunswick, filed it in the Court of Bankruptcy, served it upon the plaintiff with a notice requiring immediate payment of the debt, and at the expiration of 21 days, the plaintiff not having paid nor compounded for the debt nor entered into a bond pursuant to the statute, a notice that a fiat in bankruptcy would issue against him was served upon him in Hull. A bill was then filed by the plaintiff to restrain the issuing of the fiat, and on the 15th of June last, his Honour granted the injunction. A general demurrer was then put in to the bill for want of equity, which now came on for argument.

Mr. Bethell and Mr. Giffard, in support of the bill, contended that the act did not authorize a party out of the jurisdiction to make such an affidavit as that described in section 8, nor had it ever been decided that a party abroad could issue a fiat at all. How was it possible to pay or compound when the notice did not name any one in this country to whom the money might be paid? The defendant was therefore making a fraudulent abuse of the statute, and exceeding the powers given by it, in which case the Court will interfere. *Frewin v. Lewis*, 4 Myl. & Cr. 248. The bill alleged that the defendant was not a creditor, but on the contrary, that the defendant was indebted to the plaintiff, the defendant by demurring admitted that fact, the plaintiff therefore had an equity in his favour for the Court to act upon and prevent the fiat from issuing. *Attwood v. Banks*, 2 Beav. 192.

Mr. J. Parker, contra. The Court of Bankruptcy alone ought to decide the question. If the notice is bad, the fiat also is bad, and there will be no act of bankruptcy committed, and in no case has the Court interfered in the way now asked when the proceedings in bankruptcy are void on their very face. We have a clear legal demand, and therefore a right to issue the fiat. In *Attwood v. Banks*, the plaintiff had an equity upon which the Court acted, that case therefore does not apply. Distance has nothing to do with giving the notice or filing the affidavit; to decide that it had would in fact be making an addition to the statute.

The Vice-Chancellor said, when the case of *Higginson v. Shand*\* was before him, he was struck with the argument which was then used, and which was the same urged by Mr. Parker, viz., that the Court of Bankruptcy had jurisdiction, and therefore that this Court ought not to interfere; but he thought he ought to consider whether the case had been properly brought before the Court of Bankruptcy. In *Higginson v. Shand*, he continued the injunction on the facts which were in controversy, and not on the point of law, it being alleged by the plaintiff that there was an equitable ground in his favour, and the defendant did not by his answer sufficiently answer that allegation. The Lord Chancellor, on appeal, was of opinion that the defendant had satisfactorily answered it, but there was nothing which fell from his lordship to interfere with the view taken by his Honour of the legal part of the argument, and therefore, in addition to what his lordship said in *Frewin v. Lewis*, his lordship would be and was of opinion, that if it appeared that there was a ground of equity why the proceedings for the fiat should not go on this Court would restrain them; and his lordship certainly said, in *Frewin v. Lewis*, that if parties who had an authority under an act of parliament exceeded that authority the Court would interfere. In that case some proceedings had been taken which kept up a doubt whether certain antecedent proceedings were correct or not and during that doubt the Court might very properly interfere, but before the case came on that doubt was removed, and the matter being then legal the injunction was dissolved. Suppose the case of a railway company taking possession of ground without having given proper notice, and so on; if such proceedings were not legal, the party trespassed on might have his remedy at law; but notwithstanding such remedy, this Court had said, and he understood the Lord Chancellor entirely to accede to the proposition, that if a party professed to act under an act of parliament, it must plainly appear that he was acting under the act, and therefore, if it was sufficiently alleged on the bill that the party was not proceeding according to the act, that was a reason for the Court to interfere; and he was of opinion that if it was alleged on the present bill that the defendant was not a creditor, then that party was not within the act, and a demurrer to the bill could not be allowed. It appeared then most distinctly alleged on the bill that so far from plaintiff being indebted to defendant, the defendant was indebted to plaintiff in damages in respect of the matters aforesaid, and it was charged that the proceedings were not taken for any *bonâ fide* purposes by Wilson, and so it would appear if Wilson would set forth certain matters, but instead of answering that equity defendant demurs, thereby in his opinion admitting the equity, and therefore he thought the demurrer ought not to be allowed.

## Vice-Chancellor Knight Bruce.

*Baker v. Mosley.* Saturday, April 29th, 1848.

## WILL.—CONSTRUCTION.—“TRUSTING.”

*A bequest was made of a sum of stock to A. B., trusting that he would preserve the same so that after his decease it might go to his four children, or such of them as should survive him, and was held to create a trust in him for the benefit of his children after his decease.*

THE testator, by his will dated in 1819, (among other things,) bequeathed as follows:—“I give the sum of 2,000*l.* consols unto Samuel Mosley, the husband of my late niece, Alice Mosley, trusting that he will preserve the same, so that after his decease it may go to and be equally divided between his present son and three daughters by his said late wife Alice, or such of them as shall survive him the said Samuel Mosley, and in the event of only one of them surviving him, that the whole of the said 2,000*l.* stock may go to such only survivor.” The testator died in 1820, leaving Samuel Mosley and his son and three daughters surviving. The will was duly proved by the executors, who purchased the sum of 2,000*l.* stock, and paid the dividends to Samuel Mosley during his lifetime. Two of the daughters died during the life of Samuel Mosley, and soon after his death, in June, 1846, the son died intestate, leaving his surviving sister his sole next of kin. Her property, upon her marriage, was settled to her separate use. Samuel Mosley made a will giving several legacies. The bill was filed for the purpose of taking the opinion of the Court upon the construction of the original testator’s will on the question whether the stock belonged to the surviving son or daughter of Samuel Mosley, or whether it formed part of Samuel Mosley’s estate, and passed by his will.

Mr. Russell and Mr. Rudall were for the plaintiff, and Mr. Regnier Moore, Mr. Briggs, and Mr. C. H. Cook, for the defendants.

*His Honour.* It is my opinion that there is a trust created. The word here used, “trusting,” is a word of art, and plainly conveys the testator’s intention. The fund must be transferred to the trustees of the daughters’ settlement, who are the plaintiffs here.

## Vice-Chancellor Wigram.

*Rowland v. Morgan.* Feb. 19, 20, 28, and April 17, 1848.

## CONSTRUCTION OF WILL.—HEIR-LOOMS.

*The effect of a direct gift of chattels, in terms that in real estate would create an estate of inheritance, will not be controlled by a direction that such chattels shall be held as heir-looms.*

THE question in this suit arose under the

will of Henry Earl of Abergavenny. The Earl was, at the date of his will and death, possessed of two estates: the one the family property of Kridge Castle, (consisting of several manors,) entailed in strict settlement, (so as to descend with the title,) under an act of parliament passed in the reign of Philip and Mary, under which statute the reversion was vested in the crown; the other estate consisted of property purchased by the Earl out of his savings. The Earl was also possessed of personal chattels, chiefly plate and articles of ornament, subjects of the present suit. The Earl, at the date of his will, had two sons,—John Viscount Nevill, afterwards Earl John, and William Nevill, the present Earl. The Earl, by his will, dated the 5th of March, 1839, after reciting therein that he had only two children, namely, his eldest son John Lord Viscount Nevill, and his son William Nevill, who had a large family; and further reciting, that the ancient family entailed estates had become so improved that they produced in rental much more than when he came to the title, and that he had also by care and economy been enabled to purchase and acquire estates of the value of 70,000*l.* and upwards, and that as it was his intention to give all such estates to his eldest son, John, to descend with the title, he, said testator, considered he was bound to make a good and proper provision for his son William Nevill; the testator gave, devised, and bequeathed certain freehold messuages, farms and lands, tithes and hereditaments, and all turnpike securities, navigation and canal shares, in his said will particularly mentioned, and all and singular other the freehold and copyhold messuages, lands, tenements, and hereditaments whatsoever and wheresoever, which he was then, or at the time of his death should be, beneficially seised and possessed respectively of, or in any manner entitled to, or interested in, either in possession, reversion, remainder, or expectancy, and whether at law or in equity, or over which he had any disposing power, with their several appurtenances, save and except certain lands and hereditaments purchased by him, situate in Birling, in Kent, unto his brother G. H. Nevill, since deceased, and Daniel Rowland, (the plaintiff,) their heirs and assigns, to the use of his (the said testator’s) eldest son, John Lord Viscount Nevill, since deceased, and his assigns for his life, without impeachment of waste; and after the determination of that estate by forfeiture or otherwise, in the lifetime of the said John Lord Viscount Nevill, to the use of the said George Henry Nevill and plaintiff, their heirs and assigns, during the life of the said John Lord Viscount Nevill, upon trust for the said John Lord Viscount Nevill and his assigns during his life, and to support the remainders thereafter limited, and after the decease of the said John Lord Viscount Nevill, to the use of such person or persons as should or might be next entitled (upon the decease of the same son) to his, the said testator’s, family settled estates, in such order and course successively, and for such estate and estates,

subject to, with, and under such powers, provisions, declarations, and agreements, as are expressed, limited, and contained in and by the act of parliament of Philip and Mary, by which his, the said testator's, family estates were settled and entailed, and subject also to all other powers, provisoes, and agreements, which were contained and then in force concerning any of his said family estates, or which might be contained in any act of parliament passed touching and relating to the said estates. The testator, after making other provisions by his will which are unnecessary to be stated, proceeded as follows:—"And I hereby give and bequeath unto my said son John Lord Viscount Nevill, and to his heirs, Earls of Abergavenny, all my gold and silver plate and pictures, and all my books, lace, family pearl necklace, silver boxes, and family robes, and all diamonds, miniatures, and gold and silver ornaments, to be held as heir-looms, except such things as I shall specifically bequeath by this my will; and I direct that my executors do make an inventory of all such chattels and effects." The will then contained numerous other bequests and provisions which were immaterial to the question in the cause. The first codicil to the will was dated in April, 1841, and was also immaterial to the question in the cause. The second codicil, dated January 6th, 1842, among other bequests, contained the following:—"I declare my will and mind to be, that, in addition to the articles and things I have in my will and codicil made heir-looms, all and singular the miniatures and pictures, and silver filagree, Indian articles, ornaments for tables, and foreign lace, and all other the articles contained in two green boxes tied with tape and sealed with my seal, which are numbered 1 and 2, and deposited in a drawer in my library, and also all the miniatures, seals, and all other articles contained in a small cabinet in my gallery, shall be considered and be taken to be HEIR-LOOMS; and I hereby give and bequeath them to my executors as heir-looms in my family; and I hereby authorize and direct my executors to make an inventory of all and singular the articles hereby bequeathed, and sign the same; and I authorize them to open such boxes and cabinet for that purpose."

Upon the death of the testator, the settled estates, together with the title, devolved upon his eldest son as tenant in tail under the act, who died a bachelor, in April, 1845.

During the life of Earl John, the chattels disposed of in the will and second codicil remained at Eridge Castle, in their usual depositories. Upon the death of Earl John, his executors claimed the chattels in question, as having vested in him absolutely under the limitations of the will and codicils; upon the other hand, the present Earl and his sons contended that the effect of Earl Henry's will and second codicil, was to make the chattels devolve with the title and settled estates, so long as the rule against perpetuities would permit; and that Earl John took in consequence as tenant for life only.

The bill was filed by the surviving trustee and executor of Earl Henry, against the executors of Earl John, and the present Earl and his two sons.

*Bethell, Lee, and Goodeve*, for the defendant, the present Earl, contended that the gift of the chattels were executory merely, and that the testator had only expressed how he wished them to be settled, leaving it to the Court to effectuate that intention. This construction was strengthened by the use of the word "heir-looms," and by the purpose of the testator as disclosed by the will and codicils; that purpose appearing to be, an addition of articles of ornament to the family estate, for the embellishment thereof. And they contended that the Court should carry into effect the testator's intentions, by giving life estates only to the successive takers, so long as the rules of law would permit. (They referred to *Co. Lit.* 18 B.; *Tollemache v. Coventry*, 8 Blyth, N. S. 547; *Trafford v. Trafford*, 3 Atk. 347; besides the cases referred to in the judgment).

*Romilly and Simpson*, for the grandsons of the testator, cited *Hardwick v. Douglas*, 7 Clk. & Fin. 795; *Sanford v. Sanford*, 1 De G. & S. 70; *Clarke v. Lord Ormond*, Jac. 114; *Vanderfluck v. King*, 4 Hare, 1.

*Walker, Humphrey, and R. Palmer*, for the executors of Earl John, contended that the testator had undertaken to be his own conveyancer, and had framed his own limitations, which were executed, and being in terms that would in real estate create an estate of inheritance, the known rule of law must apply, and the chattels vest absolutely in Earl John. They cited *Attorney-General v. Duke of Northumberland*, 3 Madd. 493; *The Duke of Bridgewater v. Bigerton*, 2 Ves. Sen. 121; *Mackworth v. Huizman*, 2 Keen. 658; *Austen v. Taylor*, 1 Eden, 361; *Rochfort v. Fitzmaurice*, 2 Dru. & W. 1; *Jervoise v. Northumberland*, 1 J. & W. 574.

*Anderson and Fooks* appeared for the plaintiff.

The *Vice-Chancellor*. The first question which arises upon the will and second codicil is, whether I am to read the will and codicil, or either of them, as containing a direct testamentary gift, or a gift the consideration of which alone I am to determine, or whether the will and second codicil are to be considered directory, and what in that case is the direction to be found in them or either of them; in other words, whether the testator has taken upon himself to be his own conveyancer, or only told the Court what he desired to be done, leaving it to the Court to say what the nature of the interest he desired is to be. Of the numerous cases which have been referred to during the argument, those which I shall particularly refer to are *Gower v. Grosvenor*, 5 Madd. 347, and 3 Barnard, 54; *Foley v. Burnell*, 1 Bro. C. C. 274; *Vaughan v. Burslem*, 3 Bro. C. C. 101; *The Duke of Newcastle v. Countess of Lincoln*, on appeal in House of Lords, 11 Ves. 218, (reported in the

Court below in 3 Ves. 387; and *Cum v. Erroll*, 14 Ves. 278.

If I am to read the will and second codicil as each containing a simple direct gift, which the testator himself has directed, I cannot doubt that the claim of the executors of Earl John must succeed.

A devise to A. and his heirs, lords of the manor of Dale, gives A. an estate in fee, because by possibility it may last for ever; and if the devise were accompanied with a bequest of specific chattels to go as heir-looms, I cannot doubt that the absolute interest in the chattels would vest in it. But in order that the party may take it absolutely, the chattels should be given in terms, which in the case of a devise of lands would give an estate of inheritance; any estate of inheritance would be sufficient; the rule does not require that it should be a fee simple. These observations seem to be decisive in favour of the claim of the executors of Earl John, if I am to read the will as containing a simple and direct gift. The construction of the second codicil, upon the same hypothesis, seems to me to be no less plain. The testator adds these chattels to those he had previously given as heir-looms, and these additional chattels he also gives as heir-looms. Also stopping there, there is nothing to distinguish the gift in the codicil from that in the will; but then there is an additional gift to the executors by the codicil of the chattels in the codicil as heir-looms. That, however, is a question of construction only, and clearly makes no difference; where the trusts are declared, the construction is the same as if there had been a legal gift.

Next, suppose the direction both in the will and codicil to be executory; the question then is, as appears to me, whether I am to apply to the case the reasoning of Lord Hardwicke in *Gower v. Grosvenor*, or that which is to be found in the later cases upon the subject. I do not hesitate to say, that in the case of *Foley v. Burnell*, Lord Thurlow overruled the decisions of Lord Hardwicke in *Gower v. Grosvenor*, and *Trafford v. Trafford*. Lord Thurlow's reasoning was, that in the case of a will, he had nothing but the words of the testator for his guide, and that he could not, upon those words, ascribe to them the intention which Lord Hardwicke's reasoning required him to do. The case was afterwards heard upon appeal before the Lord Commissioners, by whom the Lord Chancellor's judgment was affirmed. Upon the appeal, Lord Loughborough said,—“It is sufficient for the present purpose that the intent is not clear. I cannot give it effect as an implied intent, for an implied intent must be free from doubt.” And his decision turned entirely upon that. In *The Countess of Lincoln v. Duke of Newcastle*, Lord Eldon expressed his approbation of Lord Hardwicke's reasoning in preference to Lord Thurlow's, but admitted, nevertheless, that it had been overruled thereby. In *Carr v. Lord Erroll*, the same rule was followed: in that case the chattels were given, as here, to

the executor as a trustee, and at the close of the argument, Sir William Grant expressed an opinion that that circumstance made no difference. He afterwards came to the same conclusion as Lord Thurlow in *Foley v. Burnell*. I must therefore consider *Gower v. Grosvenor* as overruled. It is so considered also by the text-book writers:—2 Jarman on Wills, 506; 2 Rop. on Legacies, 460. If, therefore, I am to consider and treat the will and codicil as directory, what are the limitations which I am to declare? I may undoubtedly say that no tenant takes more than a life interest in the chattel, and to that extent, I may say almost without a doubt, I should be doing what the testator intended so far as guarding the chattels for that time from alienation. But can anybody say, that by doing so I am executing the intention declared either in the will or the codicil? Should I be doing more than devising a means in a way of my own of giving effect to what Lord Loughborough calls a mere hint of the testator, not defining what he really meant? In all the cases referred to is to be found a direct reference to limitations of real estate; and Lord Thurlow would not go a step further than the direction, though the effect was that the personal estate vested absolutely in the tenant in tail, thereby withdrawing the chattel from settlement. In this case there is no direct reference to limitations of real estate, except so far as making the chattels heir-looms imports that reference. This is said to have that effect. The difficulty in the case arises from this, that it is uncertain to what the heir-looms are annexed. Whether it was the testator's intention that they should be annexed to the dignity, or to the inalienable estates, or to the devisee's estates only. Upon the hypothesis now made, that the gift is directory, I cannot consider this case as being against Earl John. The ground, however, which I mean to go upon in my judgment is, that there is nothing directory in the will and second codicil, and that the testator has himself declared what interest he intends the legatee to take. No doubt this disappoints the real intention of the testator, who probably intended the chattels to remain for ever with the estate; but he has given them in a way excluding me from holding them to be bound to the extent to which they might have been if it had been left to the Court to make such directions as the law allows.

Decree accordingly.

### Court of Exchequer.

*Cherry v. Hemming*. June 9, 1848.

COVENANT.—“NEGLECT OR REFUSE TO SELL,” MEANING OF.

*A warrant, with a condition to pay a certain sum if the party shall neglect or refuse to sell letters patent in the deed mentioned, means if he shall omit to sell.*

COVENANT. Declaration on covenant to pay for certain letters patent the sum of 840*l*.

by instalments, the first instalment to become due in one year; with a proviso, that such instalment should not be then payable until the expiration of a further six months, unless the defendant should neglect to give notice of certain matter, and that the principal sum should not be ultimately payable, unless the defendant should neglect and refuse to sell the said letters patent within a given time at the best price that could be reasonably obtained, and if the said letters patent should be so sold, the covenant for the payment of the 840*l.* to cease and determine, &c. Plea, defendant tried and could not sell. Demurrer.

*Jones*, in support of the demurrer, contended that nothing but the sale of the patent could relieve the defendant from the payment of the money.

*C. Pollock*, in support of the plea. The covenant was, if the defendant should "neglect or refuse to sell," and if the position contended for by the plaintiff was correct, there was nothing to have prevented the defendant from selling the patent for 50*l.*, and putting the money into his own pocket, and an end to the covenant to pay the 840*l.* at the same time. A man may be bound even by an impossible covenant, but if a covenant will admit of two constructions, the Court will put that construction which is consistent with reason and with the intention of the parties, and which in this case would not lead to the gross injustice contended for. The question turns entirely upon the meaning to be put upon the words "neglect and refuse." The word "neglect" must be taken to mean wilful neglect. *Harris v. Mantle*, 3 T. R. 307.

*Jones* replied.

*Pollock*, C. B. I think the plea is bad; it merely discloses that, notwithstanding the efforts of the defendant to sell, he has not been enabled to effect a sale: it may be that by exertion he might have succeeded in selling at a reasonable price: at all events, the Court cannot supply that which is necessary to give to the agreement the effect contended for by

the defendant. This was a sale for 840*l.*, subject to a condition that the instalment should not be payable for six months after the time mentioned for that purpose, if certain notice was given. The defendant did give such notice; but has he complied with the rest of the agreement? Did he sell within the period for the best price that could be reasonably obtained? He did not, and it was by this means alone that the covenant was to cease and determine. The question is, whether the word "neglect" does not mean simply if the defendant should not do the act? In the previous sentence it clearly has that meaning, and I think such interpretation is to be put upon the words "neglect to sell." The defendant has not sold, and therefore I think the plaintiff is entitled to our judgment.

*Alderson*, B. I am of the same opinion. There is first a contract of sale for a sum certain, and for payment of such sum by instalments; then comes a proviso, that if the defendant gives notice within a certain time before the first instalment becomes due, and does certain other acts, then the covenant to pay the 840*l.* shall cease and determine; if those acts are not done, the covenant to continue in full force. The condition upon which the 840*l.* was not to be paid has not been fulfilled, and therefore judgment must be for the plaintiff.

*Rolfe*, B. I am of the same opinion. This may have been a bad bargain, but then it might have been a great hardship the other way. It is quite consistent with the argument for the defendant, that upon the first day after the time allowed for the sale had expired, the defendant might have sold the patent for 6,000*l.* and put the whole of the money into his own pocket. Therefore, the construction contended for might produce the greatest injustice. The words "neglect to sell" mean clearly if he shall omit to sell. The defendant had no right to hold over for the purpose of obtaining a better price.

*Platt*, B., concurred.

BUSINESS OF THE COURTS.

Master of the Rolls.

Michaelmas Term, 1848.

|                     |        |                                                                     |
|---------------------|--------|---------------------------------------------------------------------|
| Thursday . . .      | Nov. 2 | Motions.                                                            |
| Friday . . . . .    | 3      | Petitions in General Paper.                                         |
| Saturday . . . . .  | 4      | Pleas, Demurrers, Causes,<br>Further Directions, and<br>Exceptions. |
| Monday . . . . .    | 6      |                                                                     |
| Tuesday . . . . .   | 7      |                                                                     |
| Wednesday . . . . . | 8      |                                                                     |
| Thursday . . . . .  | 9      | Motions.                                                            |
| Friday . . . . .    | 10     | Pleas, Demurrers, Causes,<br>Further Directions, and<br>Exceptions. |
| Saturday . . . . .  | 11     |                                                                     |
| Monday . . . . .    | 13     |                                                                     |
| Tuesday . . . . .   | 14     |                                                                     |
| Wednesday . . . . . | 15     |                                                                     |
| Thursday . . . . .  | 16     | Motions.                                                            |

|                     |    |                                                                   |
|---------------------|----|-------------------------------------------------------------------|
| Friday . . . . .    | 17 | Pleas, Demurrers, Causes,<br>Further Directions and<br>Exceptions |
| Saturday . . . . .  | 18 |                                                                   |
| Monday . . . . .    | 20 |                                                                   |
| Tuesday . . . . .   | 21 |                                                                   |
| Wednesday . . . . . | 22 |                                                                   |
| Thursday . . . . .  | 23 | Petitions in General Paper.                                       |
| Friday . . . . .    | 24 |                                                                   |
| Saturday . . . . .  | 25 | Motions.                                                          |

Short Causes, Consent Causes, and Consent Petitions, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

## Queen's Bench.—Crown Paper.

Michaelmas Term, 1848.

- Bucks.*—The Queen *v.* The Great Western Railway Company.  
*Same v. Same.*
- Cornwall.*—The Queen *v.* Richard William Riley.
- Devonshire.*—The Queen *v.* Wm. Warren & others, (feoffees, &c.)
- Cheshire.*—The Queen *v.* The Inhabitants of Pott Sprigley.
- England and Wales.*—The Queen *v.* The Tithe Commissioners.
- West Riding, Yorkshire.*—The Queen *v.* The Inhabitants of Halifax (with Rishworth.)
- Leicester.*—The Queen *v.* The Inhabitants of St. Margaret.
- Surrey.*—The Queen *v.* The Inhabitants of Christchurch.
- Surrey.*—The Queen *v.* The Inhabitants of Rotherhithe.
- Plymouth.*—The Queen *v.* The Inhabitants of St. Andrew.
- Middlesex.*—The Queen *v.* Hammersmith Bridge Company.
- Surrey.*—The Queen *v.* The Inhabitants of Croydon.
- Wilts.*—The Queen *v.* The Inhabitants of Seend.
- Cambridgeshire.*—The Queen *v.* The Inhabitants of Melton.
- Lancashire.*—The Queen *v.* Henry Whittles.
- West Riding, Yorkshire.*—The Queen *v.* The Inhabitants of Mirfield.
- Cambridgeshire.*—The Queen *v.* The Inhabitants of St. Ebbe.
- Gloucestershire.*—The Queen *v.* John Read and others.
- West Riding, Yorkshire.*—The Queen *v.* George Grant and others.
- Derbyshire.*—The Queen *v.* Robert Arkwright, Esq.
- Great Yarmouth.*—The Queen *v.* E. H. L. Preston.
- Kent.*—The Queen *v.* The Inhabitants of Maidstone.
- Northamptonshire.*—The Queen *v.* Lord and Steward of Weedon Beck.
- Lancashire.*—The Queen *v.* William Adam Hul-ton.
- Monmouthshire.*—The Queen *v.* The Inhabitants of Bedwelty.
- Devonshire.*—The Queen *v.* The Inhabitants of Cheriton Fitzpaine.
- Sussex.*—The Queen *v.* The Inhabitants of Hamsey.
- Norwich.*—The Queen *v.* The Inhabitants of Fawncett, St. Mary.
- Norwich.*—The Queen *v.* The Inhabitants of Tacolnestone.
- Berkshire.*—The Queen *v.* The Inhabitants of Silchester.
- Devonshire.*—The Queen *v.* The Inhabitants of Totnes.
- Lancashire.*—The Queen *v.* William Clayton, jun.
- Yorkshire.*—The Queen *v.* John Blanchard and another.
- Carnarvonshire.*—The Queen *v.* The Inhabitants of St. Pancras, (with Bangor).
- Essex.*—The Queen *v.* The Inhabitants of Hatfield Peverel.
- Liverpool.*—The Queen *v.* The Mayor, &c. of Liverpool.
- Breconshire.*—The Queen *v.* The Inhabitants of Breconshire.
- Lancashire.*—The Queen *v.* George Knox and another.
- Yorkshire.*—The Queen *v.* Francis Cooper.
- Sussex.*—The Queen *v.* The Inhabitants of St. Thomas (Winchelsea).
- Wiltshire.*—The Queen *v.* The Inhabitants of Shalbourn.
- Derbyshire.*—The Queen *v.* The Inhabitants of Llanddogget.
- Middlesex.*—The Queen *v.* The Inhabitants of St. Leonard, Shoreditch.
- Yorkshire.*—The Queen *v.* The Sheffield Canal Company.
- Middlesex.*—The Queen *v.* The Clerkenwell Improvement Company.
- Lincolnshire.*—The Queen *v.* The Justices of Lindsey.
- Middlesex.*—The Queen *v.* The Inhabitants of Mile End Old Town.
- Leeds.*—The Queen *v.* William Scott James.
- West Riding of Yorkshire.*—The Queen *v.* The Inhabitants of Lintwhaite.
- West Riding of Yorkshire.*—The Queen *v.* The Inhabitants of Silkstone.
- Surrey.*—The Queen *v.* The Inhabitants of Bormondsey.
- Surrey.*—The Queen *v.* The Inhabitants of St. Olave, Southwark.
- Middlesex.*—The Queen *v.* The Inhabitants of St. George, Hanover Square.
- Surrey.*—The Queen *v.* The Inhabitants of Lambeth.
- Warwickshire.*—The Queen *v.* The Inhabitants of Priors Hardwick.
- Yorkshire.*—The Queen *v.* The Inhabitants of Goole.
- Middlesex.*—The Queen *v.* The Inhabitants of Ealing.
- Staffordshire.*—The Queen *v.* Sir Robert Pigot, Bart.
- Hull.*—The Queen *v.* The Governor of Poor of Hull.
- Staffordshire.*—The Queen *v.* The Inhabitants of Penkridge.
- Salop.*—The Queen *v.* The Inhabitants of Ellesmere.
- Essex.*—The Queen *v.* The Inhabitants of Leaden Roothing.
- Somersetshire.*—The Queen *v.* Henry Mees.
- Lancashire.*—The Queen *v.* The Inhabitants of Wolverhampton.
- Surrey.*—The Queen *v.* Thomas Holland.
- Cambridgeshire.*—The Queen *v.* The Inhabitants of Isle of Ely.
- Cambridgeshire.*—Same.
- Breconshire.*—The Queen *v.* The Inhabitants of Merthyrmaur.
- West Riding of Yorkshire.*—The Queen *v.* The Inhabitants of Barnsley.
- Carmarthenshire.*—The Queen *v.* The South Wales Railway Company.
- London.*—The Queen *v.* The Baptist Missionary Society.
- Cornwall.*—The Queen *v.* The Inhabitants of Madron.

WE transfer to the end of this volume such parts of our Postscripts, with Notices to Correspondents and Readers, as (to save space) were given from time to time on the cover of the work, and appear requisite to be preserved.

## TOWN AND COUNTRY LAW SOCIETIES.

We are aware, as suggested by a learned correspondent, that there must be considerable difficulty in the management of the various Law Societies now existing in town and country. The metropolis seems well represented: there are the Inns of Chancery and the Incorporated Law Society for the Attorneys: and the Law Amendment Society for the Law Reformers of all classes, comprising Judges, Counsel, and Solicitors, with Peers and Commoners. In the Provinces there are many Law Societies, some for whole Counties, some for Cities, and others for particular districts; and there is an association, (with the head quarters at Manchester,) uniting into one body a considerable number of the Provincial Law Societies. Then comes the Metropolitan and Provincial Law Association, having a numerous committee both of London and country members. There are advantages and disadvantages in the number and variety of these Societies. The advantages are—that by dividing the labour, the duty is more easily performed, and a larger number are enlisted into the service. On the other hand, each society, incurring its separate expenses, requires a separate subscription. A departmental, as well as a central fund must be provided; and the good management of the whole requires as well financial skill, as general and administrative talent. But there are able men at work, and we doubt not they will by due management overcome their difficulties. We shall use our best endeavours to assist them by promulgating their views, and assisting them with our suggestions.

## GRAY'S INN.—LEGAL EXAMINATION.

At a numerous meeting of the Bench and Members of the Society, and of the other Inns of Court, assembled in Gray's Inn Hall, the following gentlemen were considered to have highly distinguished themselves in the oral and written examinations for honours in the Law of Real Property and Conveyancing, on the 7th June last, and were classed in the following order, viz.:—

|                                           |             |
|-------------------------------------------|-------------|
| Mr. William Augustus Clark, Middle Temple | } 1 Eq.     |
| Mr. Edward Harrison, Middle Temple        |             |
| Mr. John Lucie Smith, Middle Temple       | . . . . . 2 |
| Mr. John Brewer, Middle Temple            | } 3 Eq.     |
| Mr. Samuel Scott, Lincoln's Inn           |             |

We hail this first step towards a comprehensive and effective Examination of Candidates for the Bar. The Benchers have wisely selected a most important department of our Laws, which being chiefly administered out of Court, and rarely subjected to public scrutiny, demands the greatest care in its study and practice.

## REGULATIONS OF THE BAR.

A. B. is informed that, according to the present regulations, an attorney cannot be called to the Bar without ceasing to practise for *five* years, unless he was previously a member of one of the Inns of Court. There are a few practising solicitors who, being members of one of those Societies, and having *kept their Terms*, may, we believe, be called after discontinuing practice as attorneys for *two* years. \* There are others, who being members, but not having kept any Terms, must cease to practise *three* years, because they will have to keep 12 Terms. Under special circumstances, we understand that the Benchers have occasionally dispensed with part of this Term-keeping; but we are not aware of any recent instance. These recent stringent regulations, extending the barrier between the two branches of the Profession, are much complained of, and form one of the grievances enumerated in the Report of the Metropolitan and Provincial Law Association, set forth at p. 345 *ante*.

## LAW INSURANCE SOCIETIES.

We doubt whether there can possibly be room for another Life Insurance Office either in or out of the profession. There are too many already. It is not enough that the Directors are persons of respectable character, whether barristers or solicitors:—they should be well known to the profession in general; but more than all, they should each have a large practice, for it is out of that practice the business of the office is mainly derived. Let it be recollected that the expenses of management are large, and unless the business be of considerable magnitude, how are the salaries—how is a dividend on the shares to be paid?

## NOTICES TO CORRESPONDENTS.

*Examination.*—The examiners have under their consideration a suggestion for requiring the *Conveyancing* Questions to be answered, as well as those in Common Law and Equity; but no rule on the subject has yet been made. A Correspondent may therefore select, as the third head of examination, that of Criminal Law and Proceedings before Magistrates; but the more important branch of Conveyancing should not be neglected.

*Certificate tax.*—There is no doubt that if the Certificate Tax were justifiable, it ought to be extended to Stewards of Manors, Parliamentary Agents, and other persons conducting professional business but not being attorneys or solicitors.

*Copyholds.*—It appears that by the 4 & 5 Vict. c. 35, s. 62, the tenants of a manor possess the right of deferring the payment of the consideration for enfranchisement, making it a charge on the land, at 4 per cent., for a term not exceeding 14 years, at the tenant's option.



**Fraud.**—In answer to the case put by "Civis," p. 309, A. P. states that in all cases where by fraud a legatee has been induced to abandon his interest under a devise, as where he signs a release upon being persuaded that he has no interest under the will, a Court of Equity will set it aside, and time alone would not purge the offence. A conveyance of real estate without any consideration would enure to the grantor, and the propinquity in this case would not be a good consideration. See Sugden's Vendors.

**Mortgage.—Power of attorney.**—"Articulus Clericus," in answer to "A Young Attorney," p. 308, observes, that if the power in the mortgage deed were reserved in express terms to the assigns of the mortgagee, the transferee of such mortgage would be enabled to exercise such power in his own right, and consequently a power of attorney in such case enabling the transferee to exercise the power in his the transferrer's name would be unnecessary. But with reference to the right of the transferee to sue for the mortgage debt, he submits that a power of attorney from the transferrer enabling the transferee to sue for such debt in his, the transferrer's, name is in all cases absolutely necessary, inasmuch as the mortgage debt is a chose in action, and not assignable at law, and therefore must be sued for in the assignor's name.

**Defective form of policies of insurance.**—It was not stated that policies *under seal*, referring to proposals and conditions *not* under seal, were worthless. The policy itself, so far as the sealed instrument extends, is doubtless valid; but the reference to other documents not under seal is altogether useless. The whole of the contract should be embodied in the sealed instrument, and then there would be no difficulty. This amendment, we trust, the insurance offices will hereafter adopt. It seems unnecessary to legislate on the subject when the contracting parties can themselves provide an easy remedy for the defect.

**Procurator fee.**—A correspondent at Reading is informed that the procurator fee of 5s. per cent. on money borrowed on mortgage is payable to the solicitors of the Lender. This question came before the Council of the Incorporated Law Society some time ago, and the decision to the above effect is entered in the usage-book kept at the Secretary's office.

**Lien.**—"A Templar," in reply to T. W. H.'s query, states "that a right of lien confers of itself no power to sell the chattel for the purpose of discharging the debt," and he refers to *Bevan v. Waters*, 1 Moo. & Malk. 236; and *Jackson v. Cummins*, 5 M. & W. 350.

**City Seal.**—A Correspondent, E. M., informs us that the *Supreme Court at Demerara* has decided that the Certificate of Authentication of Documents under the City Seal must be signed by the Lord Mayor himself, and that the signature of the Clerk of the Seals is not sufficient. See pp. 226, 263, *ante*.

**Taxes on justice.**—The remarks of "An Attorney of Fifty Years," on the large fee paid in the Superior Courts on issuing a Writ of Summons, have been noticed. Other fees are equally objectionable, collected, as they are, merely to pay large sinecure salaries. The Committee on Fees of Courts of Law and Equity will, of course, look to these exactions. The sinecurists should be paid out of the Consolidated Fund, not out of the pockets of the unfortunate suitors who are seeking to recover their rights. The fees paid in the County Court, as "One, &c.," observes, are most unjustifiable; some of them for services undertaken but not performed, as the service of process. But little trouble is taken in these cases.

**Simony.**—In answer to the *quere* in the number for 8th July, L. says,—"It is quite clear that an exchange cannot be effected between two Incumbents of their Preferments, the one receiving a money consideration from the other. It would be Simony."

**Special Jurors.**—"An Attorney" states "that he has recently been informed of a Special Juror being summoned from Lambeth to attend at Guildford, without receiving any satisfaction for travelling or other expenses, though he had to attend several days before the cause was disposed of, beyond the ordinary Special Jurors' fee of one guinea,—being thus placed in a worse position than a witness. This grievance should be remedied.

#### ERRATA.

In the Digest of the case of *Monypenny v. Dering*, p. 372, *ante*, the statement should be read thus:—"Remainder to the use of the first son of the body of P. M. for life, remainder to the use of the first son of the body of such first son, and the heirs male of his body," &c. This case involves some interesting questions affecting the Law of Real Property, and one likely to limit a commonly conceived application of the cases founded on the rule in *Shelley's case*; such of our subscribers as take an interest in this branch of study are informed that the case will be argued before the Court of Common Pleas shortly.

We are informed that in the Report at page 117, *ante*, of the case at the Rolls' Court, of *Dowding v. Bartlett*, (*Burtley* it should be,) the application was not to substitute the name of *Tarbutt* for that of *Bartlett* but to substitute the name of *Torbert* for that of *Tarbert*.

In commenting upon the clause in the Protection of Justices' Act, giving a magistrate the option of objecting to be sued in the County Court, (*ante*, page 438,) it was inadvertently stated, that the maximum amount recoverable in the County Court, in cases of tort, was 5*l.*, whilst it should have been 20*l.* This is quite clear under the 58th section of the County Courts Act. The 129th section, however, deprives the plaintiff of costs when he sues in the Superior Court and recovers less than 5*l.*, in an action founded on a tort, and which ought to have been brought in the County Court.

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